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POLITICAL SCIENCE QUARTERLY.

INTRODUCTION.

THE DOMAIN OF POLITICAL SCIENCE.

THE term "political science" is greatly in need of definition. Technical terms should have a limited and exact meaning; but this particular term is used vaguely, not by the laity alone but by professed experts. These speak sometimes of a "political science," at other times of a plurality of "political sciences." Again, the sciences which are commonly described as "political" are often designated as "social"; and besides the various "social sciences" there appears to be a "social science."

A more exact use of these terms is certainly desirable. This, it seems to me, is more likely to be obtained by endeavoring to establish the respective domains of the sciences in question and their relation to each other, than by laying down dogmatic definitions, the practical value of which is often overrated. A neat definition is a very attractive thing. It seems to offer the conclusion of wisdom in portable form. It is, in fact, the condensed result of a great deal of hard thinking; but to understand it, to appreciate what it includes and what it excludes, the thoughts of the definer must be thought over again until the disciple has gained the same outlook over the subject as the master — and then he no longer needs the definition.

Social science, in the broadest sense, deals with all the relations of man in society; more precisely, with all the relations that result from man's social life. It may be questioned whether it is proper to speak of *a* social science. We certainly have no general social science in the sense in which we have particular social sciences. In politics, in economics, in law and

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in language, we are able to some extent to trace phenomena to their causes, to group facts under rules and rules under principles. But the laws which underlie man's social life as a whole have not been grasped and formulated. Social science or sociology, if we use the term, is therefore simply a convenient general expression for a plurality of social sciences. But social science is used in another and a narrower sense. The various social sciences do not cover the entire field of man's social life. There are portions of that field — *e.g.*, movement of population, vice and crime — which lie beyond the domain of the older and better-defined sciences; in which the preliminary work of exploration has only recently been undertaken; and in which little has been accomplished beyond the collection of data by statistical observations. For lack of a more definite term,[1] social science is used in a restrictive sense to describe these newly-entered domains of investigation.

Among the social sciences we find some which are designated as the political sciences. Political science signifies, literally, the science of the state. Taken in this sense, it includes the organization and functions of the state, and the relation of states one to another. But what are the political sciences? Are they subdivisions, or special branches of the science of the state? Economic science is obviously regarded as one of the political sciences, for the term "political economy" is used more often than "economics" and commonly in quite as broad a sense. But economic science does not occupy itself simply with the state. It is the science of wealth. It deals with the finances of the state, but it deals also with the accumulation, exchange and distribution of wealth by individuals. But the political sciences may perhaps be taken to be those which deal with the relations of man in the state, *i.e.*, with all the relations which *result*[2] from

[1] For the science of population the Germans are beginning to use the word *Demologie*. This new science, strictly speaking, lies only in part within the circle of the social sciences; in part it reaches out into natural science, *i.e.*, biology.

[2] This limitation is obviously necessary. The mere fact that certain relations exist in the state does not make them political; otherwise, in the present stage of civilization, all social relations would be political. The question is: Do the relations exist *because of* men's living in and under the state?

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man's political life. But is economic science a purely political science even in this sense? Do we not find, for example, private property and barter among people who, like Homer's Cyclops, know no other social organization than that of the family? If economics be a political science, much more must law be so. Law, like economic science, deals with many relations not resulting from man's political life — *e.g.*, property and family relations — but its rules are at least formulated by state organs, and enforced by governmental machinery. Nevertheless, law is not commonly classified as one of the political sciences. It seems preferable, under these circumstances, to recognize but one political science — the science of the state. The relations with which this science deals may, of course, be subdivided and treated separately. We may separate the relations of states one to another — the international relations — from the national. We may divide the national relations into questions of state organization and state action. We may distinguish between the various functions of the state. But there is no good reason for erecting these various groups of questions into distinct political sciences. The connection of each with all is too intimate.

In endeavoring to distinguish political science from the so-called political sciences, I have no thought of denying the close connection which subsists between political science, as here defined, and the sciences of economics and law. On the contrary it is a chief object of this article to demonstrate the interdependence of these sciences. In defining them we emphasize the point of view rather than the field of view — the side from which social relations are regarded rather than the relations themselves. Thence arises an impression that the domains of these sciences are more distinct than is really the case.

Leicht bei einander wohnen die Gedanken,
Doch hart im Raume stossen sich die Sachen.

Each of the three sciences we are now considering holds a large proportion of its territory in common with one or both of the others. Law and politics have common ground in the organiza-

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tion and operation of government in the single state. Law and economics are both concerned with all commercial transactions. The theory of governmental administration is largely economic; and state-finance is a part of the administrative system of the state, is based on economic theory, and is regulated by law. The relative position of these sciences may be indicated by drawing three circles or ellipses, each of which intersects the other two, with a very considerable space occupied by all in common. Nor is the ground which these three sciences cover, proper to them only. All the social relations with which politics, law and economics have to do lie within the domain of ethics. Duty, loyalty, honesty, charity — these ideas are forces that underlie and support the state; that give to law its most effective sanction; that cross and modify the egoistic struggle for gain.

Politics, law and economics — political, legal and economic science — these two classes of terms have thus far been used indiscriminately. But it is obvious that the politician and the lawyer are not necessarily political or legal scientists, any more than a man who busies himself in devising new means of gaining wealth is an economist. Primarily, of course, the difference is in the aim. Science aims at the discovery of truth. But the methods must be such as are adapted to realize this aim. What then are the methods of the social sciences? All the various methods employed may be grouped under one term — *comparison*. The single fact means nothing to us; we accumulate facts that seem akin; we classify and reclassify them, discarding superficial and accidental similarities as we discover deeper substantial identities. We accumulate and compare facts from our own and from foreign countries; we accumulate facts from the immediate and more remote past, and compare them with each other and with present facts. Statistics, comparative legislation, history — these are means and modes of accumulating facts for comparison.

The ancillary relation which these studies bear to the social sciences is often lost from view. We speak of an historical science, of a science of comparative legislation, of statistical science — and thus apparently coördinate these studies with the

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social sciences of politics and economics, law and ethics. But they should not be so coördinated. History, for example, is not a social science in the same sense as economics, for it does not deal with a definite group of social relations. It is a mode of investigating all sorts of social relations. The same is true of statistics and comparative legislation.

I have not the slightest intention of denying the existence of a science of history, of statistics, or of comparative legislation. There are methods of accumulating and using facts (?) that are inaccurate and deceptive. The number of these methods is as unlimited as the ingenuity of ignorance. There are, on the other hand, methods of collecting, testing, sifting and using facts that give approximately accurate and reliable results. These are properly called scientific methods. They are limited in number; and the most important are those which we call the sciences of history, of statistics, and of comparative legislation. But the relation of these sciences to the social sciences is not coördinate, but auxiliary.

Of all these auxiliary sciences, the most important is history. All other methods of comparative study may be said to operate on a single plane — the plane of the present. History gives to the social sciences the third dimension, and thus indefinitely increases the range of comparison. But it does far more than this. To the application of the historic method we owe the discovery that social institutions persist and at the same time change from generation to generation and from century to century; that these changes, in the case of each single institution, are not fitful but steady, and are of such a nature that we involuntarily borrow words which describe the processes of organic life, and speak of their "growth" and "decay"; and when we take a further step, and compare the social institutions of the present time, in their totality, with those of earlier and still earlier periods until tradition vanishes in the "infinite azure of the past," we discover a constant tendency from the simple to the complex, a constantly increasing differentiation of form and specialization of function; so that we borrow another phrase from the science of biology, and speak of the "evolution" of

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states and law, of art and language. The sociologists have borrowed the word from the naturalists, but not the conception. Before the naturalists made the word technical, German philologists had demonstrated the evolution of language, and a German jurist had said: Law is not made, it grows; it is as much a part and a product of a nation's life as is its speech.[1]

We have already seen that the domains of politics, economics and law are largely coincident. From that coincidence alone would result a close interdependence. This interdependence is greatly increased by the use of the comparative and especially of the historical method. To use statistics safely, the sociologist must take into account the entire social condition of the state in which the statistics are gathered. Political or legal as well as economic differences may make the statistical reports of two states upon the same subject valueless for comparison. The intelligent use of foreign legislations by the jurist, the economist, or the student of politics, implies not only an acquaintance with the general principles and technical structure of foreign law, but of the political and economic conditions of the country in and for which each particular law was made. But it is in historical investigation that this interdependence of the social sciences becomes most sensible; and it is through historical investigation that we gain insight into the cause of this interdependence. It is rarely possible to stamp a historical fact as exclusively political, legal, or economic. The student will naturally approach it from one of these sides, and is in danger of failing to see the others; but a one-sided view is never a true view. Take, for example, the agrarian bill of the younger Gracchus. To the economist, its principal interest lies in the attempt to break up the *latifundia*, the great cattle-ranches, and to reëstablish small agricultural holdings. To the lawyer, the chief points of interest are the tenure by which the *latifundia* were held, and the proposed inalienability of the new properties. To the student of politics, it is a phase in the struggle between the senatorial oligarchy of Rome and the

[1] Savigny, Beruf unserer Zeit (1815).

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democracy of the peninsula. But to view the fact truly, each of the three should be able to see it on all sides.

If we seek to trace through history the evolution of the state, we find each step in its development recorded in the evolution of law and explained to a great degree by economic changes. The transformation of the nomadic clan into the local community and of the tribe into the primitive state is accompanied and conditioned by the development of agriculture. The substitution of aristocracy for kingship in the ancient world, and the analogous development of feudalism in mediæval Europe, are results of the development of private property in land. The substitution of monarchy for aristocracy, and of democracy for monarchy — the cycle through which Aristotle already saw the little states of the ancient world moving — and the similar substitution, in modern Europe, of absolutism for feudalism and of democracy for absolutism — these further changes are necessitated by the development of commerce and the increasing weight of movable wealth.

If it is the evolution of law upon which our attention is primarily bent, we find that in primitive society rules which we should to-day call legal are inextricably blended with moral precepts and religious dogmas. Properly speaking, there is neither religion nor morals nor law in this stage of social development, for these distinctions are not yet drawn. The only sanction of these undifferentiated rules is religious fear and the moral sense of the community. But as the tribe becomes territorially fixed and the state takes form, the physical power of the state begins to be applied to compel obedience to a certain portion of these traditional rules, and law begins to separate itself from religion and ethics. As civilization becomes more complex, the state plays an increasingly important role, and the domain of law widens. But every step in its development, as in that of the state, is conditioned to a great extent by economic changes.

Finally, if we take economics as the immediate object of investigation, we find that the operation of the social forces with which this science primarily concerns itself is constantly modified by the development of ethics and law. In the struggle for

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existence into which men enter with unequal endowments, it is at first the physically weaker who goes under, and the physically stronger who survives; but the cruder forms of violence are gradually tabooed by ethics, and at last law interposes its imperative *vim fieri veto*, ends the reign of force, and makes the plane of struggle intellectual. Then cunning and fraud take the place of brute strength; but law meets fraud with equitable interposition, and develops a system of checks that grows more complex and refined as the increasing ingenuity of man develops subtler forms of iniquity.

It is a result of the entire preceding discussion that political, economic and legal science are so interdependent that the investigation of any one of the three implies the investigation of both of the others. Choose which you will, the others are necessary auxiliaries. But of the three, the science of the state is assuming more and more the dominant position. The principal legal question of the day, in our country, is: To what organ or organs of the state shall the development of law be entrusted — to the judicial *and* legislative, or to the legislative alone? This is the essence of the question of codification. Behind this is rising a second question, which Europe has met and answered and which we shall soon be called upon to answer: Shall the development of law be partly local and partly national, or national only? Both of these questions are political. Again, the burning economic questions of the day all turn on the advisability, the extent or the method of state interference: between landlord and tenant, in Great Britain; between capitalist and laborer, in Germany; between corporations and the public, in the United States.

The conception of the state as a mere protective association against external force and internal disorder is antiquated. The state is everywhere exercising other functions than the protection of person and property and the enforcement of contract. Whether the increasing importance of the state be deplored or applauded, the fact remains that it is rapidly becoming, if it is not already, the central factor of social evolution.

MUNROE SMITH.

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THE AMERICAN COMMONWEALTH:

CHANGES IN ITS RELATION TO THE NATION.

IN an able article upon the study of history in the universities of Scotland and England, published in the summer number of the *Revue Internationale de l'Enseignement* for the year 1885, Professor Paul Fredericq of the University of Ghent reports a conversation with the Regius Professor of History at Cambridge, the celebrated J. R. Seeley, a part of which expresses, concisely and exactly, the purpose of this paper. "It is my great aim and desire," declared the Professor, "to arouse a skepticism in politics. Here in England no one entertains any doubt in reference to the political creed, while all the world is heretic in religion."

If this be true of England and the English, to an infinitely higher degree is it true of us. In the invaluable work upon our constitutional history by the German Professor von Holst, an entire chapter — the second of the first volume — is devoted to the consideration of what he terms "the canonizing of the constitution," *i.e.*, the making of a political bible out of it — all doubts as to the absolute truth and perfection of which were regarded as greater heresies than Arianism or Sabellianism, Gnosticism or Agnosticism. The irony of the learned Professor is certainly merited. During the first decades of this century, the never changing aspect of the Nation's leaders, mutely prostrate in credulous worship before the great fetish of our Political System, is, to say the least, touching. One would think, now, that the events of 1832 ought to have excited some slight incredulity. But read the remarks made by Governor Hamilton of South Carolina when he took his seat as President of the Nullification Convention:

> Our present circumstances are a commentary on the safety and beauty of our constitution. In other countries we should render our-

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selves obnoxious to the charge of an attempt to disturb and change the very elements of government. Here all goes on with tranquillity and with the harmony of the spheres themselves.[1]

On the very eve of the great Rebellion, few saw that we were approaching an immense change in our "immutable" political system, and at its close the ex-vice-president of the defunct Confederacy, the most fair-minded and conscientious man connected with the movement, wrote a book of two volumes[2] to prove that those terrible years of bloodshed and destruction were no *attentat* upon our system. It will be remembered how anxious the great Lincoln was, throughout the entire course of that struggle, to represent the conflict, not as between the Union and the states, but as between the government of the United States and certain unlawful combinations of individuals who had usurped the powers of the state governments in certain localities.[3] He, too, with all his far-sightedness, seemed to hold to the principle of the indestructibility of the states and the immutability of their relation to the Nation. Perhaps not. He sometimes spoke of the states as the creatures of the Union or Nation.[4] Perhaps he was only using these catch-words of our political catechism to avoid offending the fundamental tenets of our political orthodoxy. Still, if Lincoln had any one quality which was supreme over all the rest, it was the absolute truthfulness of his language to his conviction. And now, after the smoke of the battle has cleared away and we have had opportunity to count the results, the same refrain greets our ears from the platform of the orator, the columns of the journals, the halls of legislatures and conventions, and even the forums of justice and supreme interpretation. In the great case of Texas *versus* White,[5] decided in the December term of 1868, Chief Justice Chase, one of Lincoln's most trusted

[1] Niles Register, XLIII., p. 219. Von Holst, Verfassung und Demokratie der Vereinigten Staaten, Bd. I., S. 56.

[2] A Constitutional View of the Late War between the States.

[3] Lincoln's Proclamations of April 15, 1861, and Dec. 8, 1863.

[4] Message, July 4, 1861.

[5] U. S. Reports. Wallace, vol. 7, p. 700 ff.

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advisers, declared that the acts constituting the Rebellion were the unlawful acts of usurping state-governments and not the acts of the states themselves, since the political system of the United States is an indestructible union of indestructible states. This language has been repeated in that august tribunal from that day to this, until, in the recent Virginia Coupon Cases,[1] Mr. Justice Matthews gives vent to his judicial oratory in the following remarkable outburst:

> The states are ideal persons — intangible, invisible, immutable; the state-governments are agents, and within the sphere of the agency perfect representations, but, outside of that, lawless usurpations. This distinction is essential to the idea of constitutional government. To deny it or blot it out obliterates the line of demarcation that separates constitutional government from absolutism; free self-government based on the sovereignty of the people from that despotism, whether of the one or the many, which enables the agent of the state to declare and decree that he is the state — to say, *l'état c'est moi*. Of what avail are written constitutions, whose bills of right for the security of individual liberty have been written, too often, with the blood of martyrs shed upon the battlefield and the scaffold, if their limitations and restraints upon power may be overpassed with impunity by the very agencies created and appointed to guard, defend and enforce them, and that, too, with the sacred authority of law, not only compelling obedience, but entitled to respect? And how else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders who are the instruments of wrong, whenever they interpose the shield of the state? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple and naked, and of communism, which is its twin; the double progeny of the same evil birth.

There may be reason in all this, and logic too, as well as rhetoric; but I must confess that to me it is about as intelligible as proverbs to Dundreary. To my humble comprehension, Dogberry's charge to the watchmen in *Much Ado* is a model of coherence and consequence when compared with this. It is evident that the learned justice had soared high enough to

[1] U. S. Reports, vol. 114, p. 290 ff., Oct. term of 1884.

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touch the clouds — as some of his more practical brethren, in their dissenting opinion, seemed to think.[1]

Now it seems to me that the great vitiating principle of the most of our political and judicial reasoning is this dogma that our political system is an indestructible union of immutable states; and it is in reference to this dogma that I shall endeavor to excite skepticism. I shall undertake to show, in the first place, that the perpetuity of our Union depends primarily upon the existence of certain geographical relations and ethnical conditions; and, in the second place, that the doctrine of the indestructibility and immutability of the states is an abstraction which has no warrant either in history or present fact or tendency.

The volumes which have been written and spoken upon these two cardinal doctrines view the subject almost exclusively from the standpoint of the constitution. The *constitution* sets no period to the existence of the Union — therefore it is perpetual; the *constitution* reserves the rights of the states — therefore they are indestructible and immutable. The fundamental fallacy in such reasoning springs from regarding the constitution as the *creator* of these relations instead of as an attempt to express them in human speech and legitimize them by common consent. The constitution of the old Confederation of 1781 used stronger language in reference to the perpetuity of the Union[2] than our present instrument, and yet in less than a decade it was laid with the things of the past. The Union Act for the German states of 1815 declared indissolubility[3] as the first principle of the system; and yet, after forty years of impotence, the Union thus nominally created fell asunder, and the system it expressed disappeared in the smoke of the Seven Days' War. I might easily occupy the entire space assigned to this paper in citing the instances of history which show that

[1] U. S. Reports, vol. 114, p. 330 ff.

[2] Articles of Confederation, art. xiii. I place the date 1781 instead of 1777, because the former was the date of final ratification and organization under the articles of Confederation.

[3] Deutsche Bundesacte, art. 5, Schlussacte.

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a political system cannot be perpetuated simply through the guaranty contained in its written constitution.

We must go back of the constitution into the domains of geography and ethnography, the womb of constitutions and of revolutions, and ask there for the principle of perpetuity in any political union. The answer comes to us, if we have but the ear to catch it, quick and sharp and decisive: that a population of an ethnic unity inhabiting a territory of a geographic unity constitutes a distinct nationality, and *nationality* is the condition of political perpetuity; more fully, that a population, speaking a common language and having common ideas as to the fundamental principles of rights and wrongs, and resident upon a territory separated by high mountain-ranges or broad bodies of water or by climatic differences from other territory, presents us with the natural basis of a true and permanent political establishment; and the further the departure from these conditions, the greater is the danger of ultimate dissolution.

Now let us turn to our histories and see if this answer does not meet with complete verification — see if the historic fact did not first awaken the consciousness of the ethnologic principle. Let us take, in brief survey, the evolution of the European states of the present. Let us begin with the more than thousand petty tribes of Latins, Celts and Teutons, and follow the gradual combinations of these until at length Rome stretches her imperial authority over the most of them, and pursues the well thought-out policy of subjecting all to her sway. Read the declarations of her statesmen and her churchmen: they have but a single tone, and express but a single sentiment, *viz.*, that the Roman Empire is the God-established system for Europe, and must endure so long as time shall last. But no, this was not true. Five centuries from the day upon which Julius crossed the Rubicon it was in ruins, and Europe was in anarchy. The resistance of Teutonic nationality destroyed the system of united Europe under the leadership of Rome.

Slowly and painfully, through three hundred years of thought and action, the great work of reorganization was accomplished, and Europe was once more a united state under the leadership

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of the German Franks. Gauls, Germans, and Romans, kings, nobles, bishops, and people had participated in the labor of this new creation, and all pronounced it perpetual; the restoration of the empire of Augustus, the everlasting kingdom of God upon earth. But in less than forty-four years from the day when Leo set the crown of Cæsar upon the brow of the great Charles, the unity of Europe was again dissolved. The national distinctions and antitheses between Italians, Germans, and Kelto-Romans or French had become too well established in both thought and language to admit of *any* political union. Europe was not, indeed, led back into the universal anarchy of the fifth century. On the other hand, she had found now the principle of political perpetuity in the independence and unity of the nation. Of course the first adjustments were crude and faulty. They did justice to national differences only in the rough. They looked too much to the satisfaction of dynastic claims. First, they connected the valleys of the Rhone, Saone, Mosel, Meuse, Rhine, and Scheldt with Italy; but these were not Italian either in geography or population, and in twenty-seven years that connection was severed, and these lands set off upon the right and the left, in nearer correspondence with national affinity. Then the inability of Italy to establish a national system, because of the conflict of Lombards, Greeks, Saracens, and Normans within this territory for the supremacy, and because of the policy of the bishops of Rome to make Rome and the properties of the bishopric an independent state, enabled Germany to establish the eight hundred and forty-four years of German domination in Italy, which, while it gave to Italy Germanic vigor and to Germany Italian culture, delayed by so much the nationalization of the political systems of both. Again, they called this Holy Roman Empire of the German Nation perpetual — the everlasting Christian state — but in less than four centuries its life and energy were exhausted beyond any power of resuscitation. Slowly but surely it went to decay, and at the touch of Bonaparte's sword it fell into fragments. But the great conqueror himself could not unite it with France in the universal empire which he had planned. The feeling of

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national independence resisted again successfully the system of a united state of Europe, even though it came with the specious offer of destroying princely rule, and conferring liberties upon the people never before enjoyed. And when, after Leipsic and Waterloo, the princes patched up the systems of Germany and Italy at Vienna, they denationalized both, by leaving the half-Slavic half-German Austria with the leadership in both. They, too, called their work perpetual[1] and immutable, and placed it under the guaranty of all Europe. But within less than half a century, the national sentiment expelled Austria from both Italy and Germany, and reorganized their political systems upon a truly national basis; and to-day Austria herself is threatened with dissolution because she has no national unity, and does not seem able to produce one by successful amalgamation.

Now *we* do not live under any other heavens, nor are we directed by any other providence or nature; and the question of the perpetuity of our Union is the question as to the natural unity of our territory, and the homogeneity of our people. Is our population substantially one in language and in the fundamental ideas of rights and wrongs? and is our territory substantially a geographic unity? The answer to these inquiries is neither easy nor certain. Take the last first. This side of the Rocky Mountains, it would seem that our territory satisfies the physical requirements of political unity. The mass of it is the great valley of the Mississippi and its tributaries. But how is it in reference to that which lies beyond the great chain. Mr. Webster regarded it, at the time of its connection with us, as the Asia of our territory;[2] and so it is. Its formation, climate, and scenery favor the pastoral economy and the patriarchal politic; and the perpetuity of its connection with the great empire on the east depends upon the power of the eastern civilization to overcome those physical influences. Now take the other question: Is our population substantially one in language and in the fundamental ideas of rights and wrongs? We can say in reply, that we are substantially though not exclusively an English-speaking people; and this, with freedom and

[1] Deutsche Bundesacte, art. 5, Schlussacte. [2] 7th of March speech.

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facility of intercourse, is the mightiest force in producing unity of nationality; but are we one in our philosophy of rights and wrongs? It is here that the variety of race seems to have produced the greatest aberration. We all know that the slavery of the African race occasioned the development of a view of civil rights and of government altogether contradictory to that held where this relation between the superior race and the inferior did not exist. And now the appearance of the Mongol in the far west threatens the repetition, in some degree, of that same experience. In addition to race differences, there are other things which have become, and threaten to become still more, disturbing elements in the development of a national consciousness of rights and wrongs, *e.g.*, the silver-mines and the Mormonism of our Asia. The influences exerted by both are confusing and corrupting forces, and enemies dire to honor in both man and woman. Shall we be able now to expel these powers of dissolution and decay through the development of a powerful national morality, and thus solve successfully and completely the great ethnical question upon which our national perpetuity depends? I hope so; I believe so; but I do not know. Of one thing I feel certain, however, that if we would accomplish this great end surely and speedily, we must not be in a hurry about erecting any more of that territory into commonwealths or, as the common parlance would have it, states.

To bestow upon the residents of a territory, no matter how numerous they may be, the powers of local self-government and of participation in the national government, before they have the moral and intellectual qualities which warrant it, is in my opinion a political crime. It is not only the right, but the duty of the Congress, as the interpreter of the Nation's political consciousness, to withhold such powers until it is clearly manifest that their bestowal will not result in unrepublicanism and unnationalism. The claim of a *right* by the population of any part of our territory to become a commonwealth or state rests upon a vicious doctrine in regard to the origin of rights. The right of government over such populations is wholly in the Nation; and what they may receive from time to time of govern-

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mental powers is derived from the Nation's grant through the Congress; and the Congress is bound to take care in the making of such grants not to denationalize the Nation. Every student of political and legal science should divest himself, at the outset, of this pernicious doctrine of natural rights, according to which each individual or the population of any section is practically authorized to determine in what his or its rights consist. Natural rights are at best but the ethical feeling as to what rights should be, and the more individual or particularistic that feeling is, the less, as a rule, is it to be trusted; while the more general it is, the more is it to be relied upon; and when it originates in the Nation's consciousness, it has the moral persuasiveness behind it which influences the Nation's *will* to transform it into rights. Until this happens, however, the assertion of rights is but an ignorant boast or a disloyal threat.

It was not, however, the doctrine of rights, nor principally that of the indissolubility of the Union, that I proposed to expound or criticise, but the dogma of the indestructibility and immutability of the commonwealths under this Union. The special purpose with which I started out, and to which I shall now return, was to indicate the present position of the commonwealths in our system, and their probable position in the near future; and I know of no other way to accomplish this purpose than to review the history of their relation to the Nation from the beginning, and see if, instead of immutability, there has not been constant mutability and general tendency towards a certain end. The great mistake usually made in the presentation of our constitutional history is beginning at too recent a date. The formation of the constitution of 1787 is commonly regarded as the starting-point, and all that went before is generally not counted for much, or ignored altogether. This has a reason, of course, and I think it is the confused idea of the American mind that the government of the English crown over the colonies was all usurpation, and therefore not to be taken into account; but this is *borné*, not to say silly. We must begin with the beginning, whatever and wherever that may be, if we would attain a proper comprehension of any subject. The beginning, in this

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case, is the act of the English King issuing patents to certain combinations of individuals, making them corporations, granting to them the property in loosely-defined savage territory, and vesting in them certain limited powers of local government over the population which they might induce to settle upon it. The *crown* was, therefore, the centre of unity, from which the colonial establishments all proceeded, and to which they were all subject; and they were provinces whose boundaries were lines of property grants and administrative convenience, and in which such powers of local self-government were exercised as the crown was pleased to confer in the patents, and through such organs as were constituted thereby. This was all regular and legitimate. It corresponded to the political consciousness and the political system of the age, and to the universally recognized prerogatives of the English crown. There is no fault to find with it, therefore, from a true historical and cosmopolitan standpoint, and we should not regard it from any other standpoint.

Now the next step. The impatient commentator answers, rebellion, revolution. No, it was not. It was the development of a sentiment of national unity and independence throughout the population resident within the thirteen colonies along the Atlantic coast, from New Hampshire to Georgia; then the assembly in Philadelphia of the representatives of this entire population for consultation in regard to the wrongs which they fancied the central government[1] had perpetrated, or was about to perpetrate, upon them — wrongs which appear so doubtful, in themselves considered, that an unprejudiced mind feels forced to look deeper for the cause of the disaffection, and does not fail to find it, either in the growing consciousness of nationality. The great Frenchmen, Turgot and Choiseul, had it right, twenty years before the declaration of '76, when they argued, no matter what might be the attitude of Great Britain toward her North American colonists, the result would be the same. They were one whole and separate nation, fast becoming adult, and no matter how mild the government of the

[1] The British government, the Home government.

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crown over them, it would soon be felt to be foreign rule. But I must not lose the point of significance to our question; *viz.*, that this assembly of the young Nation's representatives it was which protested first, then waged war against the royal sovereignty and government; and, finally, after two years of existence, declared, as the representative of the whole People, and by the authority of the whole People, the independence of the *United Colonies*. What now was the relation of the individual colony to the Nation, and to the Nation's representative — the Continental Congress? The united People had, through the Continental Congress, asserted their sovereignty. They were organized only in that Congress. They had not as yet made any constitution vesting powers or reserving powers or withholding powers. We must, therefore, determine the powers of the Continental Congress by regarding it as the organization of the People, and the successor to the British government. In the former capacity it was sovereign constituting power. In the latter it was central government, authorized by the general principles of the devolution of powers to succeed to all of the powers exercised by the King and Parliament over and in the colonies: *viz.*, the functions of international government; of intercolonial government; and the right of participation in the purely internal government of most of the colonies, through the veto power upon the acts of their legislatures, the ultimate revision of the decisions of their higher courts, and the appointment of their governors and chief judicial officers. In the former capacity, it might and should have constituted a new system of governmental organs, both central and local, with such reservations of rights and distributions of powers as it judged conducive to the welfare of the whole people; while in the latter it should have governed with all the powers of both crown and Parliament until the new system was ready. By all the reasons of political science and the natural devolution of powers, this was the position of the Nation and its representative, the Continental Congress, on the one side, and of the commonwealths and their local governmental establishments on the other; and there were at the moment no other

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reasons and norms by which to measure these relations.[1] Such was the general feeling during the first moments subsequent to the "Declaration." This was manifest from the appeals of the existing authorities of the old establishment in the colonies to the Continental Congress for direction in regard to how their local governments should be re-organized after the expulsion of the royal supremacy — in reality, for authority to re-organize them — and from the acts of the Congress authorizing them to proceed, upon the basis of the widest possible suffrage, to a provisional re-organization.[2] Under this permission and advice, conventions of the people resident within the several colonies began the work of framing paper constitutions for their local governments,[3] while the Continental Congress, busy with the waging of the war to maintain the declared independence, delayed the construction of a constitution for a permanent central government which should define the relation of the Nation and its general representative to the states and the state-governments. This was the fatal error. All powers were, so to speak, in the air; and the state conventions, by proceeding first to the formation of written constitutions, got the pick, and in half a decade the leavings were few enough; so that when the plan of the new central government, drafted by the Continental Congress itself, came to be established in 1781, it presented the system of separately sovereign and independent states — sovereign and independent now as against *each other*, and not, as

[1] It seems to me that one of the most fatal mistakes frequently made in the treatment of our constitutional history is the insufficient regard paid to the place and importance of the Continental Congress. Its temporary character, and its failure to grasp, at the right moment, all the powers which the people were ready to recognize to it, are undoubtedly among the causes which have produced this lack of historical appreciation; but, as students of political science, we must not confound its powers with its acts, nor its representative position with the views of its members. Viewed from the standpoint of political science, it was the most sovereign organization which our history has ever produced — the Nation's organ in revolution. Both Story (vol. I., p. 140, 4th ed.) and Curtis (vol. I., p. 40) accord it this position; but even they do not, it appears to me, draw from the proposition the full conclusions, in detail, which a sound and consequent logic requires.

[2] Curtis, History of the Constitution, vol. I., pp. 36, 37.

[3] Connecticut and Rhode Island, not being under the necessity of providing new organs of administration, since the king did not appoint their governors and judges, framed no constitutions at this juncture.

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the Declaration had it, *unitedly* sovereign and independent as against *Great Britain* — and connected with each other by a league of friendship.[1] According to this system, there was no Nation, and the government which it established was no representative of the Nation; it was but a congress of joint commissioners. From provinces of the British crown, these colonial establishments had now become, in name and theory at least, sovereign and independent states. Here certainly was mutability, construction and destruction. No one can possibly claim that the relation of local to central power in our system had not undergone within less than a decade a complete transformation. The constitution declared the relation now unchangeable save by the consent of every state given through its legislature.[2] So far as the paper constitution was concerned, this system of sovereign states in league was made immutable. In fact, it lasted just eight years, and was then overthrown by revolution. The states had usurped the powers of the Nation. They had planted themselves upon ground false to philosophy, false to history, and false to physical and ethnical relations. These powers must be wrenched from them, and they forced back into their proper subordination. But how could it be done? The existing law provided: Only upon proposition of the Congress ratified by each and every state through its legislature.[3] This method was tried in modest demands, and failed every time.

At length two far-seeing spirits divined the means of escape from the unbearable situation. These two were Bowdoin and Hamilton; and their argument was: The states have usurped the sovereignty of the *people of the Nation*, and the *People* must reassert their sovereign power. But this was revolution — revolution against usurpation. Bowdoin boldly proclaimed it by securing from the Massachusetts legislature an instruction to the delegates sent by it to the Confederate Congress to move in that body for the summoning of a convention of the people of the whole Confederacy to revise the constitution.

[1] Articles of Confederation, arts. ii., iii.
[2] Articles of Confederation, art. xiii.
[3] Ibid.

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But these delegates were so frightened at the revolutionary character of the proposition, that they disobeyed the command of the legislature which sent and instructed them, and never presented the project at all.[1] On the other hand, the more politic Hamilton had recourse to one subterfuge and another; until at last, chiefly through his shrewd manipulation of opportunities, the best talent of the Nation was brought together in secret convention, and persuaded to frame a constitution withdrawing from the states the greater part of the usurped powers, and to make appeal to the people of the Nation to establish it. The People answered with sufficient unanimity, Yea, and the Nation reasserted its sovereignty. What now was the relation between the states and the Nation in the new system? The most superficial comparison of the new constitution with its predecessor manifests the immense change which had been wrought in this respect.

In the first place, *sovereignty* could no longer be claimed as a state attribute, nor *separate* independence. Sovereignty resided alone in the *people* of the whole Nation, and a state could be legally bound in organic changes against its will.[2] In the second place, it withdrew all of the really political functions from the states, and vested them in the Nation's governmental representative, *viz.*, the powers of war and peace, of diplomacy and commerce, the regulation of internal intercourse, of finance and the monetary system, of the military system,[3] and of the local governmental system.[4] It left to the states thus mainly jural and police functions. So thorough-going was the change

[1] Bowdoin's Message of May 31, 1785. Curtis' History of the Constitution, vol. I., p. 336 ff.

[2] Preamble to the Constitution of 1787 and art. 5.

[3] Constitution of 1787, art. 1, sec. 8.

[4] The requirement (art. 4, sec. 4) of the present constitution that the United States shall preserve republicanism in the state governments vests in Congress the power to determine in what republican forms and institutions consist, *i.e.*, to prescribe the only legitimate form of local government which the Nation suffers to exist. This is the necessary conclusion from the language of the constitution certainly, and also from the reasoning of Chief-Justice Taney in the case of Luther *vs.* Borden in 7 Howard, U. S. Reports. The Congress has exercised the power in every enabling act and in the reconstruction acts of 1867.

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which the relation between state and Nation now suffered, that we cannot longer properly speak of our local organizations as states, but as commonwealths, *i.e.*, local governments containing, under the sovereignty of the Nation and the supremacy of the Nation's general governmental representative, a large element of self-government.

Here certainly was mutability again to the degree of revolution. Here was destruction to the sovereignty of the states and construction in the reëstablishment of the sovereignty of the Nation. For seventy-two years, only the span of a single human life, we lived under this system and this relation of commonwealths to Nation. For seventy years we imagined it permanent and perfect, when suddenly the iron logic of events demonstrated the fact that still too much had been left under the control of the local organizations, and that the Nation must narrow still further their sphere of action. It now placed bounds to their wide-reaching powers in the domain of the jural and police relations, by making citizenship national, decreeing the equality of civil rights, and limiting the whole of their authority by the principle of the due process of law as interpreted by the national judiciary.[1] Here was another immense change in the relation of commonwealth to Nation. There is now really nothing further necessary in the domain of constitutional law to enable the Nation's governmental organs to nationalize, in fundamental principle, the whole of our *private* law, just as there is nothing further necessary than the existing provision imposing upon these organs the duty of maintaining republicanism in our local forms, to enable them to nationalize at almost every point, the whole of our *public* law. By this last change the commonwealths have been substantially assigned to the office of administering the system of private law between persons resident within their bounds and supplementing its defects, and exercising the police power in behalf of the community against the too wide extension of individual rights — all upon the basis, however, of fundamental principles prescribed by the Nation, and upheld by the Nation's organs of central

[1] Constitution of the United States, Fourteenth Amendment.

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government. In the way, however, of their complete relegation to this position stand three things. The first is their large control, legislative and administrative, over the elections of the organs of the central government. The second is the election of the members of the national senate by the commonwealth legislatures. And the third is the equal representation of the commonwealths in the national senate. The first may be changed, except as to the election of the electors for the national executive, by a simple law passed by the national legislature.[1] The second, and that part of the first not subject to the legislation of Congress, may be changed by the general process of amendment prescribed in the constitution.[2] But the third is the stronghold of confederatism, and most probably cannot be changed save by a revolutionary act.[3] They are all relics of the usurpation of 1781. Whatever show of reason existed for any of them[4] has largely passed away, and is now on the point of totally disappearing; and when the people come clearly to see that this intermeddling with the politics of

[1] Constitution of the United States, art. 1, sec. 4, and art. 2, sec. 1, par. 2.

[2] Ibid., art. 5.

[3] Ibid.

[4] It will be remembered that neither in the Randolph resolutions nor in Pinckney's draft of a constitution, nor in Hamilton's plan of government, offered to the convention of 1787, was the choice of the senators by the state legislatures or the equal representation of the states in the senate recommended; but that election of the members of the second branch by those of the first was the idea of both Randolph and Pinckney, while Hamilton suggested that their choice should proceed from the people through indirect election, and all three made population the basis of representation in both houses. It will also be remembered that the whole convention in committee voted for representation in both houses according to population, *i.e.*, "whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes"; and finally, that when the proposition for equal representation was adopted after much opposition, it was so done by the votes of the delegates from only five states, *viz.*, Connecticut, New Jersey, Delaware, Maryland, North Carolina — the delegates from only ten states having voted, four against and one divided. — *Elliot's Journal of the Federal Convention*, pp. 143, 144, 146, 179, 182, 206. That is, before the spirit of compromise with petty or unworthy interests or both had won the day, the reasons for the constitution of the senate finally adopted had not prevailed. The abolition of slavery, the increase of population, and the network of railway and telegraph have now about destroyed the conditions which prompted the demand for the compromise.

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the Nation is what prevents the commonwealths from properly discharging their proper functions in jural and police administration, the spirit will hardly be lacking to proceed to the transformation. For ten years now we have been passing through a period of reaction against the pronounced nationalism of the previous fifteen; but we shall come to the end of it, and the precedents are not wanting in our history to point the way for the still further nationalization of our political institutions.

But this is not yet all. There is still another standpoint from which to view the rapid and constant changes in the constitution of our "indestructible and immutable states." We have been considering what the people of the Nation have been doing to the commonwealth; let us now contemplate the changes which the people resident within the limits of the particular commonwealth have been imposing upon its governmental organization. And right here let me point out the fact that there is no true parallelism in the relation of the Nation and the commonwealth to their respective governmental organizations. The commonwealth really exists only in its governmental organization, while the Nation has a physical and an ethnical existence as well as a governmental. There is really no such thing as the people *of* a commonwealth, in a sound view of our political and social system; there is only the people of the Nation resident *within* the commonwealth. The People is a national conception, and preserves its integrity against government only as Nation. Blot out the national government, and you still have the Nation physically and ethnically, which, by its own innate power, will restore its political organization; but blot out the government of the commonwealth, and you have a territory measured by the chain of the surveyor, with a population governed exclusively by the Nation's organs, and restored to local self-government only by the Nation's act. This is really, though probably not consciously, what every judge means when he says: "To the government of the United States that which has not been granted is denied; but to the governments of the states that which has not been denied is granted." The commonwealth is purely a creation of law, and is identical with its

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political organization. I am endeavoring by this analysis to lead the mind of the reader up to the proposition that, when the people resident within a commonwealth withdraw powers from the government of the commonwealth, the result is practically a change in the position of the commonwealth, and not simply a redistribution of powers between different organs of the commonwealth.

Now let us see what has been done in this direction during the last hundred years. Let us contrast the older constitutions with the new. Briefly we may outline one of the earlier forms as follows. It consisted first of a bill of rights, defining in general terms the right of the individual to the security of his person and property, to his freedom of opinion, expression, and conscience, and defending him against any arbitrary act by the government for their abridgment. In the second place, it constructed the organs of government: a legislature of two houses, each with full control over its own organization and procedure, chosen by the people, meeting annually, and having unlimited power of legislation upon all subjects not forbidden by the bill of rights or by the provisions of the national constitution or the acts of the national government; an executive, chosen likewise by the people, having the power to nominate almost every important officer in the commonwealth, administrative and judicial, and exercising a large power of dismissal and a large discretion in the administration of law; and a judiciary holding by the tenure of appointment, and for the term of good behavior; and lastly, it contained a provision for its own amendment or revision or both.[1] It was a plain and practical instrument; and the government constituted by it was a strong and vigorous organization. Now contrast with this the constitutions framed during the last twenty-five years, either for new commonwealths or as revisions of the older forms. The first thing that will strike the observer is the great bulk of these new instruments. When he looks into

[1] Massachusetts and New York. In some of the states the legislature was all-powerful, electing both the executive and the judiciary; *e.g.*, Virginia, North Carolina. — *Poore's Constitutions.*

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them, he will find some difficulty in determining whether he is reading a constitution or a statute book or a treatise on parliamentary law; and a careful examination will reveal the immense decrease in the dignity and power and energy of the governmental organizations therein established. In the first place, the legislatures constituted in nearly all of them have been confined to biennial sessions, which means of course that the people want as little legislation and as little expense for legislation on the part of the commonwealth as possible. Some thirteen[1] of them prescribe the number of days beyond which the legislature shall not remain in session; and one[2] declares that if it passes the limit, the members shall receive no pay for the extra time. There is no doubt that this is all degrading to the dignity of the legislature, and tends to create or increase the feeling among the people, that it is something to be gotten rid of so far as possible. In the second place, the legislatures established by nearly all of these constitutions have been deprived of the control of the fundamental rules of their own procedure, and the constitutions themselves stuffed with such details of parliamentary law as the following examples will illustrate. No law shall be enacted except by bill.[3] No bill shall contain more than one subject except general appropriation and revenue bills or a digest or revision of statutes.[4] The subject of each bill shall be expressed in the title.[5] Every bill in reference to a tax must distinctly state the tax and its purpose.[6] Appropriation bills shall contain only the appropriations for the ordinary expenses of the government, interest on the public debt,

[1] Alabama, Arkansas, California, Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Nevada, Virginia, and West Virginia.

[2] California.

[3] Alabama, Arkansas, California, Colorado, Maryland, Missouri, Nebraska, Pennsylvania, Texas, Wisconsin.

[4] Alabama, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

[5] Alabama, California, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

[6] New York.

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and appropriations for the common schools.[1] All special appropriations must be by separate bill, and contain but one subject.[2] All bills shall be read upon three different days before passage.[3] All bills must be printed for the use of the members, before final passage.[4] All bills must be read at length upon the final passage.[5] No bill shall be so altered in the process of passage as to change its original purpose.[6] All laws revived, amended, or extended must be reënacted at length, and not merely referred to by title or description[7] — and so on *ad infinitum*. In all this it is unmistakably manifest that the popular dissatisfaction with and suspicion towards the legislature are seeking to find safeguards against the ignorance or rashness or corruption of the legislators by introducing the fundamental principles of parliamentary procedure into the constitution.

In the third place, the legislatures in nearly all of these recent instruments have been deprived of their previously almost unlimited powers of legislation upon most important subjects, such as the raising and appropriating of money, the exercise of the right of eminent domain, and the creation of corporations. In the earlier constitutions, about the only restriction placed upon the exercise of these great powers was that private property should not be taken for public use without a just compensation being rendered therefor; but a volume would be necessary to recite the limitations contained in the later forms in regard to these subjects. Here are some of the

[1] Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Louisiana, Nebraska, Pennsylvania.

[2] Alabama, Arkansas, California, Georgia, Louisiana, Pennsylvania.

[3] Alabama, Arkansas, California, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia.

[4] California, Colorado, Illinois, Maryland, Missouri, Nebraska, Pennsylvania.

[5] Alabama, Arkansas, California, Colorado, Illinois, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Oregon, Pennsylvania, Tennessee.

[6] Alabama, Arkansas, Colorado, Missouri, Pennsylvania, Texas.

[7] Alabama, Arkansas, California, Colorado, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Texas, Virginia, West Virginia.

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examples. The legislature shall tax all property *ad valorem*.[1] The legislature shall exempt only municipal, educational, religious, and charitable corporations or associations from taxation.[2] The legislature shall exempt educational, religious, and charitable corporations from taxation only in regard to the lands, buildings, and furnishings actually used in the prosecution of their legitimate purposes.[3] The legislature shall tax corporations by the same rate as individuals.[4] The legislature shall levy no tax greater than three-fourths of one per cent in any one year.[5] The legislature shall have no power to borrow money except for the purpose of meeting an accidental deficiency in the revenue, repelling invasion, and suppressing insurrection.[6] The legislature shall not loan the credit of the state to any private person or association or corporation.[7] The legislature shall not appropriate the money of the state to internal improvements.[8] The legislature shall authorize the formation of no corporation under a special law.[9] The legislature shall

[1] Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

[2] Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Minnesota, Missouri, Nebraska, Nevada, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia.

[3] Same as last.

[4] Alabama, Colorado, Florida, Illinois, Iowa, Kansas, Mississippi, Nevada, Ohio, Pennsylvania, Texas.

[5] Alabama; Arkansas, one per cent; Colorado, three-fifths of one per cent; Louisiana, one and one-fourth per cent; Missouri, one-fifth of one per cent in addition to amount necessary to pay interest on the public debt; Texas, one-half of one per cent in addition to amount necessary to pay interest on public debt.

[6] California, Colorado, Florida, Illinois, Kansas, Maryland, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, West Virginia, Wisconsin.

[7] Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Maryland, Michigan, Minnesota, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

[8] Alabama, Michigan, Minnesota, Virginia, Wisconsin.

[9] Arkansas, California, Colorado, Florida, Illinois, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, West Virginia.

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charter no bank for more than twenty years.[1] The legislature shall pass no law authorizing a banking corporation to issue bills of credit,[2] *i.e.*, paper money, nor to suspend specie payment.[3] The legislature shall pass no law assuming the liabilities of any corporation,[4] or releasing the indebtedness of a corporation to the commonwealth,[5] or authorizing the taking of stock in any corporation by the commonwealth.[6] The legislature shall pass no law surrendering the power of eminent domain over corporate property or any other property.[7] These are not a tithe of the limitations upon these four subjects; and to these must then be added scores of provisions prohibiting absolutely legislative action in regard to certain subjects, requiring it absolutely in regard to others, fettering special legislation, and making wide-reaching exceptions from its scope of action — a dreary and wearisome waste through which no reader can be led and kept awake, but in which the indices all point in one direction. It cannot be doubted that we have in all this a great decline in the dignity, influence, and power of the commonwealth legislatures, and therefore of the commonwealths themselves. It is unmistakable that a stronger consciousness of nationality, a larger confidence in the national government, and a pronounced distrust of the commonwealth governments have taken possession of the whole people, and are now realizing themselves in the constitutional and legal transformations of our entire political system.

In the fourth place, these more recent constitutions weaken the power of the commonwealth governor. It is true that, in the earliest instruments framed subsequent to 1789, the gov-

[1] Alabama, Indiana, Pennsylvania.

[2] Alabama, Arkansas, California, Illinois, Indiana, Iowa, Kansas, Minnesota, New York, Pennsylvania.

[3] Illinois, Indiana, Iowa, Michigan, Minnesota, New York.

[4] Indiana, Iowa, Missouri.

[5] Missouri, Pennsylvania, Texas, Virginia.

[6] Arkansas, California, Colorado, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, Nevada, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, West Virginia.

[7] Arkansas, California, Colorado, Georgia, Illinois, Missouri, Nebraska, Pennsylvania, West Virginia.

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ernor was restored in large degree to powers lost during the period of the Revolution, and that during the first three or four decades of the present century he seemed to hold his own. It is also true that his independence of the legislature was worked out through the constitutional developments between 1789 and 1840, and has been preserved as a permanent principle, and that a longer term has been accorded him; but from the fifth decade of the century to the present, the tendency has been to limit his administrative discretion, hedge in his pardoning power, narrow the scope of his power to appoint and dismiss by making the officers of the commonwealth and especially of its municipal divisions elective by the voters, and to place him under the surveillance of a cabinet of elective officers, not necessarily in political accord with him, whose duty it is to record his acts and report the same to the legislature. More than ten years ago, Governor Bullock of Massachusetts raised the complaint that the governor's position in that commonwealth was no more what it had been in the earlier days. But a survey of the constitutions of all the commonwealths will show that the change in this respect in Massachusetts has been less than the average. We may affirm, I think, that he has lost far less than the legislature during the last forty years; which is one more evidence of the fact that the true sphere of the commonwealth government is administration rather than legislation. Nevertheless, he is not regarded either by the whole Nation or by the part of it resident within the particular commonwealth as the important personage that he was before 1861.

In the fifth place, these recent constitutions have decreased the dignity and influence of the commonwealth judiciary. In the older organizations the judges generally held by the tenure of appointment, or election by the legislature, and for the term of good behavior. In the later forms, on the other hand, they hold by popular election, and for a short term of years. I cannot comprehend how any one who has studied, with any degree of thoroughness, the *personnel* of our commonwealth judiciaries, or the decisions proceeding from them, can hesitate

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for a moment in pronouncing a decline of intelligence and conscience in this, with us, most fundamental department of government. The filth of an electoral campaign, a short term and a petty salary, are poor attractions for men of great learning, austere morals and reserved habits. This change in the character of the judicial systems of the commonwealths has been one of the forces contributing to create the impulse, manifest in many quarters, to go to the national courts when, upon any principle or pretext, their jurisdiction can be invoked. It may be affirmed that the judiciary, as well as the executive, gained something in power as against the legislature in the period from 1789 to 1840, for it too, as a royal institution, had suffered severely during the Revolution. It may also be asserted that, between 1840 and the present, it has lost less ground, by constitutional limitation, than the legislature or the executive. This is again evidence of the principle that the sphere of the commonwealth government is administration rather than legislation, and judicial administration more than executive administration. But the power which springs from the permanency of the judicial office, as well as its dignity and influence, has suffered decline in all of the recent forms.

Lastly, these more recent instruments contain provisions constitutionalizing the municipal divisions of the commonwealth, *i.e.*, defending them, in greater or less degree, against the power of the government of the commonwealth, securing their boundaries,[1] establishing their organizations, defining their powers, prescribing the tenure and duties of their officers,[2] *etc.* This is a most serious question. It demonstrates the fact that the government of the commonwealth has ceased to be, in many respects, the *natural* local government. It threatens the gradual dissolution of the commonwealth through the consolidation of the municipalities.[3] It appears to me that while the legis-

[1] *E.g.*, Missouri, Nebraska, Ohio, Texas.

[2] *E.g.*, Alabama, Arkansas, California, Colorado, Illinois, Indiana, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Virginia, West Virginia, Wisconsin.

[3] Counties and cities.

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lative and judicial powers exercised at the beginning of the century by the governments of the commonwealths are gravitating towards the national government in greater or less degree, the police powers, on the other hand, are passing over to the municipalities, and that this result is being produced as much by dissolution from within as by centralization from without, if not more. I do not believe that this is a pendulum-swing towards one extreme to be followed by a return to the other. The transformation rests upon a change of natural conditions and forces, which now manifest only a tendency to intensification in the same direction. We may describe the change simply and briefly as follows. When the colonies were planted by Great Britain upon the Atlantic shores, it was in the form of communities widely separated from each other by tracts of wilderness, in which roamed the savage and the wild beast. When they became states, these communities had encroached a little upon the surrounding wildernesses separating them from each other, and had made a few bad wagon-roads in some places through the same, and a man might travel overland from one to another, or get a communication through, in about the time required for a modern steamship to go from New York to Liverpool, and with much greater hardship and danger. The really settled portion of a state at the date of the Revolution was about the extent of a good large county, or, at most, of two or three counties. The state government was therefore, at that time, real local government. But now these vast tracts of wilderness separating the original states have all been levelled. The parent communities have sent out thousands of offspring to form new communities within the waste, while thousands of other communities have been established having no such natural connection with the original settlements; and all of them are bound together by the network of bars and wires, which enables a man to live in any one of them, and be in constant communication with anybody living in any other. No one knows now, by anything which nature has to show either in geography or ethnology, when one

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crosses the line which separates two commonwealths from each other.[1]

The two natural elements in our system are now the Community and the Nation. The former is the point of real local self-government; the latter that of general self-government; and in the adjustments of the future these are the forces which will carry with them the determining power. The commonwealth government is now but a sort of middle instance. Too large for local government, too small for general, it is beginning to be regarded as a meddlesome intruder in both spheres — the tool of the strongest interest, the oppressor of the individual. This has been its history in other lands and other times; and the mere fact that it professes to be popular here, while it has been princely or aristocratic elsewhere, will not save it from the same fate.

Putting together all these principles, facts and tendencies — physical, ethnological, historical, legal, and political — how can we any longer declare the cardinal doctrine of our system to be "an indestructible union of indestructible and immutable states"? Are we not dealing in mere abstractions when we say so? Are we not giving way to an exaggerated Platonism in our political philosophy — attempting to substitute ideas *for* things, instead of seeking to find ideas *in* things? Are we not grinding out an old tune, from which the melody has long since departed? In a word, have we not completed our Federal era and attained the natural condition of a real national system — conditions which not only permit it but require it? And if this be true, in any degree, with regard to our present status, will it not be so in a much higher degree fifty years from now? It seems to me that it must. It seems to me that, in the twentieth century, the commonwealth will occupy a much lower place in our political system, the Nation a much higher, and the municipalities a much more distinct and independent sphere. It seems to me that we shall then, if not before, be

[1] This is not quite true, as I have already indicated, should the line traversed be that of the Rocky Mountain range; but in regard to the territory lying east of that boundary, this assertion may be made without qualification.

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compelled to reformulate our cardinal doctrine, and that it will read: the Nation, sole and exclusive sovereign, distributing the powers and functions of government between central organs, commonwealth and municipality; and defining, guaranteeing, and defending the fundamental principles of the civil right — in accordance with the dictates of the Nation's political and juristic policy. This sounds rather jejune, I confess, when compared with the grandiloquence of the other statement; and I have no expectation that the view thus expressed will meet with any general acceptance at this moment. As I said at the outset, I have not proposed to play the role of the propagandist. My object is not, at this time, to inspire belief, but to excite skepticism; and if I have accomplished this in a single mind, I am content: for I shall have aroused in that mind the spirit of independent research in politics; and, according to my scholastic arithmetic, one capable and conscientious inquirer counts for more than a hundred disciples.

JOHN W. BURGESS.

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THE COLLECTION OF DUTIES IN THE UNITED STATES.[1]

THE recent Special Report of the Secretary of the Treasury on the Collection of Duties treats of the verification and authentication of invoices by the consular service, the entry of merchandise, its appraisement in the case of *ad valorem* duties, the final assessment of duties, suits against collectors, and deterrent legislation against frauds on the revenue. It is a criticism of existing methods, and to some extent a defense of those measures taken to enforce the laws which have met with the opposition of importers.

The Secretary points out (pages iii and xviii) that the weakest points in the laws are the means taken to ascertain the value of goods on which duties are to be assessed. These are:

(1) The obligation imposed on all importers, to declare the value of invoices;

(2) The requirement that all invoices shall be authenticated by our consular officer nearest the place of shipment; and

(3) The appraisement of the goods by customs officers at the time of importation.

With regard to the first, the Secretary shows by a historical review of the different customs laws that the obligation to declare the value of goods has been imposed on the importer from the very beginning. In 1823 the distinction was made between merchandise purchased abroad by the importer, and goods imported by the manufacturer himself. In the latter case the intention of all laws since 1823 has been to find from the owner the "fair market value" of the goods at the time and place they were procured or manufactured; in the former, to get from the shipper of purchased goods an account of the actual transaction by which he obtained them. Great difficulty

[1] Report of the Secretary of the Treasury on the Collection of Duties, 1885.

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seems to have arisen in the ascertainment of the "fair market value," though the courts have given plain rules (page vii) by which manufacturers are to be guided. The Secretary proposes no remedy, but seems to think the apparent difficulty arises simply from the fact that foreign manufacturers and home buyers are willing to connive at fraudulent and undervalued invoices in order to obtain cheap goods. He regards a true and correct invoice as essential to an honest enforcement of the existing complicated tariff law, and believes the present system must be maintained.

As to the consular authentication of invoices, his criticisms are very severe. He shows (page ix) that this means was not adopted till 1818, and that it has not been at all efficient. It is difficult, if not impossible, to prosecute abroad an offense against our tariff laws; it is impossible for consular officers, no matter how expert in values, to adequately inspect merchandise in the large cities of Europe, where a great number of invoices are daily presented; and to rely on samples presented by shippers may, when these are dishonest, be very misleading. Again, on account of the habit which has sprung up of requiring fees for this consular authentication of invoices, there is often an unseemly scramble by consular officers for these fees, which, as the Report shows (pages xiii and 425), go into their own pockets. The result is that consuls will grant as favorable terms to shippers as possible, to the great detriment of the revenue; and since the consular service is not under the control of the Treasury Department, it is difficult for that Department to enforce the observance of the tariff laws. In reference to this method of ascertaining values, the Secretary says:

> One effect of the legislation of Congress and the instructions by the Department of State . . . has been to lead shippers who are abroad, as well as appraising officers who are at home, to look or to pretend to look upon consular officers as in effect customs appraisers in a foreign country, whose verifications of invoice values are to be received with a credit and authority which they really do not and cannot deserve. As it is now, the shipper misleads consular officers; and they in consequence mislead appraising officers, who return false values and classifications to the collectors. (Page xvi.)

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The final step in the ascertainment of values is the appraisement. As seven-tenths of the whole customs revenue is collected in the port of New York (page xl), the Secretary devotes his entire attention to the method there adopted. This, excepting in some instances the designation of officers, is substantially the same at the other ports (page xix).

The method is as follows: The collector is to designate on the invoice packages for examination and appraisement; and these are sent to the appraiser who by law[1] is to make the appraisement. The practice, as evidenced by the Treasury Regulations of 1884, article 455, is that one of the ten assistant appraisers is to certify the appraisement; but the examiners, who were provided by a law of 1866[2] to replace simple clerks, are really the only officers who examine the goods and therefore in fact the only appraising officers. The Secretary thinks that this is not only illegal but unjust; for the examiners are paid such small salaries that it is impossible to obtain men competent to appraise imported goods. He says (page xxii) that the range of salaries paid in New York by the large importing and jobbing houses in the city to those who are deemed competent to buy merchandise abroad is twice or even three times as high as is the range of salaries paid to examiners in the New York Custom House who examine similar articles. He complains also that these examiners are too apt to accept as the dutiable value the value fixed by the shipper and maker of the invoice and certified by the consular officers.

It will be observed that by this system of appraisement the finding of the question of fact, *i.e.*, the actual dutiable value of the goods, is entrusted to government officers exclusively. Their tendency is of course to make the interest of the government their own, and thus, in those cases where they do actually inspect goods, to make the valuation as high as possible. In order now to allow the importer to be represented, the policy of our laws has always been to permit an appeal from the decision of the appraisers to a body over whose formation the importer should have some control, or in which his interest should be repre-

[1] 9 Stats. at Large, 630. [2] 14 Stats. at Large, 302.

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sented. This was done in all the customs laws previous to 1851, either by allowing the importer to select a merchant appraiser who should act on the board of re-appraisement, or by forming the board entirely of merchant appraisers, whose interest was of course to keep the valuations as low as possible. The law of 1851[1] changed this by putting in the hands of the collector the appointment of the one merchant appraiser on the board. As the other member of the board is the general appraiser, a government officer, the entire control of re-appraisement proceedings is in the hands of government officers or persons appointed by them. The importer thus is no longer represented. This has been aggravated in two ways:

(1) The Treasury Regulations of 1884, article 1415, provide that, in these cases of appeal to the reappraising board, the local appraiser is to submit to the collector a list of names of merchant appraisers. This list is prepared by the examiner or assistant appraiser (page xxvii); and from this list the collector, in most cases, selects the merchant appraiser. So the appointment of this person, who is supposed to represent the importer's interest, is really made by the very officer whose decision is appealed from.

(2) The Secretary, by a letter of June 9, 1885 (Appendix to Report, page 98), forbids importers to be represented before the board by attorneys or custom-house brokers, permitting the appearance only of employees or salesmen familiar with facts touching the question under consideration. Their statements, and those of the witnesses called by the appraisers, are to be "taken in the presence of official persons only." Witnesses may not be cross-examined by importers.

The result of these laws and decisions is, then, that the re-appraising board has become purely official in character, and is used simply in the interest of the government. Further, if there is disagreement in the board — which can always be caused by the general appraiser, the agent of the government — the collector, another government agent, is to decide. When it is remembered that the re-appraisement is final, and that if

[1] Rev. Stats. sec. 2930.

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it exceeds by ten per cent the entered value a duty of twenty per cent in addition to the regular duty must be levied, it will be seen that there is another side of the question which Secretary Manning does not see. He, being an honest and efficient officer, sees simply the side of the government. He sees those defects in the laws by which the government may be, and probably is, defrauded of its revenue. He forgets that the rights of the individual are not sufficiently protected.

Is it possible to find a method of appraising goods by which the rights, both of the government and the importer, will be protected? The experience and practice of other nations may perhaps give us the answer. The principle of the customs laws of England, France and Germany is to confine the discretion of customs officers within the narrowest possible limits. To do this, the laws give a detailed enumeration of the objects on which duties are to be imposed and of the rates of those duties. They eliminate, where it can be done, the question of fact. Specific duties are therefore adopted. In the English law, only specific duties appear to be imposed. In the French and German laws, however, this cannot be done; since the tariff is there protective, and must therefore include a greater variety of objects. Where *ad valorem* duties are thus unavoidable, the method is as follows:

By the French law, the declaration or entry of the importer is taken as the valuation on which the duty is to be assessed. If, however, the customs officers believe that there has been an undervaluation, they have the right to take the goods at the valuation given by the importer with an additional five or ten per cent, and after paying such sum to sell them for the benefit of the government.[1] This right is called the *droit de préemption*. This method is too arbitrary to be of great value. An importer may not wish to sell his goods at that price; and the government may lose, as goods at a forced sale will not often bring a fair price.

The German method seems to be fairer. It is based on the same principle which pervaded our own laws before 1851. In

[1] L. 4 floréal, an IV. and L. July 2, 1836.

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the German, as in the French law, the entry of the importer is the basis of the valuation on which the duties are to be assessed. If there is thought to be an undervaluation, the customs officers have the same *droit de préemption*. But both they and the importer may, if they prefer, ask to have an appraisement of the goods made by experts. Of these there are to be two, one appointed by the importer, the other by the local customs officers. If these experts cannot agree, they are to appoint an umpire. If they cannot agree in the appointment of such umpire, he is to be designated by the president of the court of commerce, or, where there is none, by the presiding judge of the civil court of first instance. Now, if the decision reached by these experts shows that the actual value of the goods does not exceed by five per cent the declared valuation, the duties are to be assessed on such declared valuation, and the costs of the appraisement are to be paid by the customs office. If, however, the appraised value does exceed the declared value by at least five per cent, the customs officers may make use of their *droit de préemption*, or may assess the duties on the appraised value; while, if the appraised value exceeds by *ten* per cent the declared value, the rate of the duties to be assessed is to be increased fifty per cent. In both these cases the importer is to pay the costs of the appraisement.[1]

This method is not at all foreign to our system. Our law formerly permitted the importer to designate one of the merchant appraisers. If this method were adopted, the consular authentication of invoices might be dispensed with, and with it the fees which have become a serious tax on shippers. In 1883 they were $926,054.95. (Report, page xv.) Again, the importer would be represented in the appraisement, and the appraisers would not be misled by consular certificates. In fact, our present system, under which this question of fact is decided by professional officials, is at variance with our whole law governing administrative matters. In almost all other cases, such questions are decided either by juries or by per-

[1] Bundesgesetzblatt, 1869, p. 317, § 93.

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sons who, though officers, are chosen by the people or represent both parties. All questions of fact in the assessment of direct taxes are regularly so decided. Where property is taken for public use, its value is to be determined not by government officers but by commissioners who represent the individual as well as the government. Further, by this method use could be made of expert knowledge, which, according to Secretary Manning's Report (page xxii), we can hardly hope to find in the examiners.

Secretary Manning may be right in maintaining that the rights of the government are not sufficiently protected under the present system; but the fault is in the officers themselves. No nation has a system in which the appraising board is so completely in the control of the government; and the complaints of importers, relative to the Secretary's efforts to enforce the laws on which the system is based may well be understood.

There are two other important subjects treated in the Report. One is the final assessment of duties. This is made by the collectors at the several ports. The object of the law of 1799 which placed this duty upon these officers may have been, as Secretary Manning says (page xl), to provide for local self-government under the general supervision of the central government. But where local officers are appointed and removed at will by the central authority and are subject, as ours are now, to its direction, there is very little local self-government in the English and American sense. And where the duties of the collectors are so onerous as to absorb all their time, as is now the case in our customs service, we have a professional bureaucratic government. Originally it was not so. There was no appeal from the decision of the collector in his assessment of duties, except to the courts. And the appeal to the courts was simply in the nature of a civil action (for money had and received) against the collector, who was regarded as having taken advantage of his official position to extort money contrary to law. When, in 1839, it was provided[1] that collectors should not reserve money obtained from the collection of duties to pay

[1] Act, March 3, 1839.

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any judgments found against them in such suits, but should pay within a given time all money received into the Treasury, the United States Supreme Court held that an action for money had and received would not lie against a collector, as he had simply obeyed the law to the best of his ability and it would be unfair to make him personally responsible for errors in judgment.[1] The individual, then, had no remedy; the collector's decision was final. This appeared to be too arbitrary; and, after one or two changes, an act of 1864[2] provided for an appeal, under certain conditions, from the collector's decision to the Secretary of the Treasury. This appeal was entirely of an administrative character. After the Secretary's adverse decision, the importer might bring an action, nominally against the collector, but really against the government — since the Secretary might pay such judgments, or refund duties illegally exacted. The development of this administrative control of the Secretary over the decisions of the collectors, and the practice which resulted therefrom of sending out special agents to inspect the actions of local officers, has undoubtedly tended to decrease their sense of responsibility — a result which the secretary deplores (Report, page xxxix) — and thus to destroy all local self-government. But this control has unquestionably made the service more efficient, and brought about a uniformity in the treasury decisions which otherwise could not have been obtained. It has also given the individual a very inexpensive remedy against the decisions of local officers. This he has now in addition to his judicial remedy, which was restored to him by the act of 1864.

This judicial remedy consists in an appeal to the ordinary courts where the principles of trial by jury are applied. Secretary Manning alludes to the suggestions made at various times by his predecessors either that the decision of the Secretary be final, or that a special tribunal be formed for the purpose of trying any appeals from such decisions. He is, however, in favor of the existing system, and bases his opposition to the

[1] Cary *vs.* Curtis, 3 How. 236.

[2] 13 Stats. at Large, p. 214; Rev. Stats. sec. 2931.

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formation of a new tribunal mainly on constitutional grounds. He says he is advised that the constitution would forbid the taking away from an importer the right of trial by jury in a suit against a collector. But such a suit is only in name against the collector. It is in reality against the government, and the case already cited shows that no importer has the right to bring such an action. So, if it were believed to be advantageous to make these suits what they really are — suits against the government — there would be no constitutional objection to giving their decision either to the Court of Claims, or to some special tribunal. The remaining questions are simply questions of expediency and here views differ. Many decisions of juries in these customs cases would seem to show their unfitness for such cases.[1]

The remarks of the Secretary on the last subject of importance treated in his Report, *viz.*, suits against collectors, are well worthy of serious attention. All the delay in the prosecution of these suits seems to arise from the fact that the legal force of the government is not under the control of the department responsible for the collection of the revenue. Would it not be better, if there should be established a separate legal force, under the direct control of the Treasury, for the prosecution of revenue suits? Would it not be better, if the Solicitor of the Treasury were made what he once was, a subordinate of the Treasury Department, and were given the direction and control of all subordinate officers occupied with these matters? There is really no room in our system for a department of justice except for the prosecution of crimes, and it is very questionable whether anything has been gained by its formation.

FRANK J. GOODNOW.

[1] See correspondence in relation to the best method of determining questions in customs revenue cases, 17 Court of Claims Reports.

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AMERICAN LABOR STATISTICS.

SOME of the German economists, particularly Professor Gustav Schmoller of Berlin, are credited with the sentiment that political economy will never fulfill its true function until it develop into a "Social Science." Whatever strength this view of the subject may seem to have doubtless comes from the extent to which political economy has of late years busied itself with questions which, in many aspects, are social as much as economic. It is trite to say that the old political economy paid particular attention to the problems of production and exchange, almost neglecting those of distribution, while modern economists deal mostly with those of distribution. The whole socialistic movement has acquired importance during the last thirty — one might almost say twenty — years. Every teacher of political economy feels how entirely inadequate is the treatment of "property" in such text-books as J. S. Mill's; and it is curious to contrast the brief notices of St. Simon and Fourier, which make up Mill's paragraph on socialism, with the full courses of lectures devoted to that single topic in German and American universities to-day. The burning question in political economy, at the present time, is that of the distribution of wealth, especially in respect to the so-called laboring class. Does the laborer get his fair share of the wealth which his labor has aided in producing? This is the question of wages, or, more broadly, the labor question.

It is needless to say that this question has excited great public interest. It is everywhere in the air. On all sides we hear of the labor problem, of the condition of the laboring class, of schemes for its amelioration by charity, by co-operation, by trades unions, or by state help. The pulpit and the religious press have also seized on the question, and we hear of what Christianity can do, or ought to do, in solving the

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labor problem. Most of these discussions assume that the condition of the laboring class is not what it *ought* to be. But the meaning of this *ought* is not commonly defined. Sometimes it evidently means (as in trades unions and co-operation) that labor does not get as large a share of the product as it might get. On the other hand, it is used often in a very vague sense, meaning that the wages of the laborer do not enable him to live in decency and comfort, as we in this day understand decency and comfort.

Great confusion has been brought about by the failure to draw this distinction between the economic and the ethical or humanitarian view of this question. The question how much labor can produce, and what wages the laborer can get, is an economic question. The question whether or not the present condition of the great mass of laborers is one worthy the status of a man, or in accordance with a humanitarian civilization, is an ethical one. The two points of view must be kept distinct, and each question held apart from the other. For the first is a question of possibility and fact, while the second is a question of sentiment and ethical consciousness. It may be that labor can produce more, or by organization get a greater share of the product. Or it may be that all ethical sentiment in regard to what the laborer ought to have, may shatter on the impossibility of labor producing it or, under the present or any probable organization of industry, getting it. Or finally it may be that the ethical necessity of bettering the condition of the laboring class is so great that every effort must be made to modify the present economic organization, even at the risk of the overthrow of historic civilization. But whichever point of view we take, we should distinctly understand that we are discussing the question from that and from no other.

There is, however, one question which is common to both these points of view; namely, the question of fact — of the present condition of the laboring class. The answer to this question interests alike the economist and the philanthropist, for the present condition of the laboring class is the

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basis from which each must start in his line of reasoning. It is necessary to know this in order to determine either the economic possibility or the ethical desirability of changing that condition. Upon its determination hangs also the determination of several other questions; *e.g.*, whether the condition of the laborer has improved or deteriorated; whether the American laborer is better off than the European or not; and, finally, how urgent is the necessity of relief. The fundamental question in the labor problem is: What is the present condition of the laboring class?

If now we inquire how we shall determine what is the condition of the laboring class, the answer is: By statistics. Gather statistics of the average wages of working men; then statistics of what these earnings will buy, the price of food, of clothing and of shelter. Still further, get statistics of how many hours the man works, how many days he is obliged to be idle, how many days he is sick, and then, if possible, of his general physical, intellectual and moral condition. By this method you will get a clear idea of what his real condition is, and be able to judge what means, if any, should be taken for his relief.

But the private individual, whether economist or philanthropist, cannot collect statistics. It is a very laborious and expensive undertaking, requiring often official position and legal powers. We have here, evidently, a field for governmental activity, and a work which only government can successfully perform. And this particular statistical investigation is one which we should suppose government would readily undertake. As a matter of fact, government has undertaken this work. We have in this country no less than sixteen governmental bureaux of statistics of labor, established for the express purpose of investigating the condition of labor, conducted at considerable expense, employing a considerable force of chiefs and clerks, and publishing annual reports which now number some sixty and more volumes.

It is the object of this paper to determine how far, with all this machinery, we are answering the question: What is the

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condition of American labor? We must inquire into the history of the establishment of these bureaux, their organization, their financial resources, their legal powers, the scope and methods of their work, and the validity of the results they reach. Such an inquiry will not be useless. Some of these reports are quoted far and near as authoritative, and our investigation will determine how much reliance is to be placed upon them. For if these returns are incorrect, evidently our conclusions based upon them must also be incorrect. Perhaps, also, in the course of this study we shall learn some things about statistical methods, and the conditions necessary for successfully getting social statistics.

I. *Bureaux of Statistics of Labor: History of their Establishment.*

There are now in the United States sixteen bureaux of statistics of labor. Most of them are of recent date.

The *Massachusetts* bureau is not only the oldest, but is by far the most widely known, and is the model which the others have for the most part followed. Established in 1869, it has every year conducted inquiries and published the results. Its officers have consisted ordinarily of a chief, and first clerk; and the total expenses have been from ten to fifteen thousand dollars. It conducts the census of the state in the intermediate decennial periods (1875, 1885, *etc.*), when, of course, the expenses are largely increased. Up to 1884, it had published fourteen annual reports, six census volumes, four pamphlets, and nine parts of reports printed separately. The bureau keeps a register of some 2400 parties to whom it supplies its reports. It has a statistical library of 2700 volumes.[1] The Massachusetts bureau is by far the most important of all, both in the quantity and the character of the work it does.

In *Pennsylvania* there is a Bureau of Industrial Statistics, which is a part of the Department of Internal Affairs; but it

[1] Carroll D. Wright. Report made to the National Convention of Chiefs and Commissioners of State Bureaux, *etc.*, held at Columbus, 1883.

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seems to busy itself more with the description of the industrial condition of the state than with the condition of the laborer, although it does go into that somewhat. The bureau is allowed $2000 for contingent expenses.[1]

The *Ohio* bureau went into operation June 1, 1877. It apparently devotes itself entirely to investigating the condition of the laboring class; but its resources are very small, its contingent expenses being limited to $550, and its commissioner having no clerical assistance.[2]

The *New Jersey* bureau was established in 1878. Its reports contain descriptions of industries, as well as investigations in regard to labor. Its chief is paid $2500; its secretary $1200; and its contingent expenses are $3000.[3]

The *Illinois* bureau was established in 1879. Instead of a chief, it has a board of commissioners of five members (appointed for two years), three of whom shall be manual laborers, and the remaining members manufacturers and employers of labor in some productive business. There is, besides, a secretary, appointed by the board, but not a member of it. The secretary is the active officer, and devotes his whole time to the work of collecting statistics.[4]

The *Missouri* bureau was established in 1879. At first confined to the cities, and chiefly the city of St. Louis, its work was afterwards extended to the whole state. It pays the commissioner $2000, and allows $2000 for contingent expenses.[5]

The *Indiana* bureau was established in 1879. It is a general bureau of statistics, and collects facts in relation to the State of Indiana, its agriculture, manufactures, social condition, *etc.* It does not devote much time to labor statistics.

The other bureaux are of too recent establishment to have any history. *New York* (established in 1883) employs a commissioner at a salary of $2500, a clerk at $1200, and allows $3000 for contingent expenses. *Wisconsin* (established in 1883) allows

[1] See Rep. 1882–3.
[2] Rep. Convention of 1883 at Columbus, p. 26.
[3] *Ibid.* p. 27. [4] *Ibid.* p. 29. [5] *Ibid.* p. 31.

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only $1500 to the commissioner, and $500 for contingent expenses. *Michigan* (established in 1883) allows the commissioner $2000, deputy $1500; expenses outside of these shall not exceed $5000. *California* (established in 1883) pays the commissioner $2400, deputy $1500, and allows $500 for contingent expenses, and $600 for rent. *Iowa* (established in 1884) pays commissioner $1500, and necessary office expenses. *Maryland* (established in 1884) appropriates $2500 for salaries and expenses. *Connecticut* (re-established in 1885) allows its chief $2000, and the services of one clerk together with office expenses. *Kansas* (established in 1885) allows commissioner $1000, and necessary expenses not to exceed $1000. Finally, we have a *National Bureau* at Washington (established in 1884), the total expenses of which are not to exceed $25,000.

I have enumerated these bureaux, with details in regard to the date of their establishment and the amount of money devoted to them, for the purpose of determining what we may expect from them in the way of scientific investigation.

It appears, in the first place, that they are for the most part of very recent origin. The Massachusetts bureau dates back to 1869; the Pennsylvania, to 1872; the Ohio, to 1877; the New Jersey, to 1878; and the Missouri, Illinois, and the Indiana bureaux, to 1879. The rest are only about two years old, or less. The business of collecting statistics successfully is one, however, which requires a great deal of experience, besides knowledge and administrative ability, on the part of the chief. It will hardly be expected, therefore, that the majority of these reports will be of any very great value. Especially in this country, where it is so difficult to find experts in any work of this sort, it would hardly be possible to man so many new offices with experienced chiefs. They are making their experience now; and all we can ask is, that they profit by this experience in the future. The discussions held at the annual conventions of the chiefs, especially about methods of collecting statistics, show that they are studying the subject, and the prospect is encouraging.

The second thing that comes out in this sketch is the paucity

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of financial means placed at the disposal of these bureaux. The salaries of the chiefs may perhaps correspond to that of other state officials of the same rank, and most of them are provided with a clerk; but outside of this there is scarcely any money for the actual work of investigation. Massachusetts is about the only exception. There, from ten to fifteen thousand dollars are spent annually. New Jersey and Michigan also deal in a fairly liberal way with their bureaux, allowing $5000 per annum for contingent expenses; and New York allows $3000. But in the great number of cases, the sums allowed are ridiculous in amount. Sometimes it is only postage, stationery, and office expenses; sometimes it is four or five hundred dollars additional. The chiefs themselves complain bitterly of this niggardliness; and it must be admitted that, with such means, very little can be accomplished. With the few hundred dollars at their command, they can neither undertake extensive statistical investigations covering the whole state, which would require a large clerical force, nor special inquiries demanding the services of expert agents. It seems probable that this explains the general character of much of the material included in their reports. The chiefs have not sufficient funds to carry on real investigations or inquiries; they are obliged to content themselves with general remarks on economic subjects, or with printing extracts from the United States census or even non-official sources.

When now we consider the rapidity with which these bureaux have been established of late years, and at the same time the meagerness with which they have been endowed, the suspicion arises that legislators have not been altogether sincere in establishing them, or desirous that they should accomplish anything. Two other motives might lead to their establishment: one is to provide places for political friends, the other to satisfy demagogic clamors on the part of labor organizations or politicians. It is impossible, of course, in an academic study like this to say if either motive has had any influence. Of politics, we find no trace in the reports themselves. Only once, at the Boston convention, it was announced that the chiefs of the Ohio and

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Missouri bureaux had retired, owing to a change in the politics of their states.[1] Most of the chiefs seem to hold their place permanently. This is notably the case with Carroll D. Wright, who has been at the head of the Massachusetts bureau for more than twelve years.

The second motive seems much more plausible; namely, that these bureaux were established owing to pressure from labor organizations, or as a means of conciliating the labor vote. Of course this also is a matter of local history, and not of public record. Very little tendency of this sort appears in the reports themselves. In Massachusetts, it is true, two commissions on hours of labor and employment of factory children had recommended the establishment of such a bureau, while not recommending any labor law. Possibly the establishment of the bureau may have been a sop thrown to the laborers whose petition had been rejected, but the bureau was not established as the result of direct action of the labor organizations.[2]

On the other hand, in Ohio the bureau was established by the efforts of a Mr. Foran, president of the Coopers' International Union, a body composed of journeyman coopers, and a Mr. Fehrenbatch, president of the National Association of Mechanical Engineers — the former as member of the Constitutional Convention of 1874, the latter as a member of the House of Representatives in 1876.[3] The Illinois bureau also is said to be due directly to the action of the labor organizations. In 1879 these labor organizations secured four members of the House of Representatives, and it was upon their motion that the bureau was established.[4]

Outside of these states we find no trace in the reports themselves of any influence of labor organizations. In many of them reference is made to the importance of the question of labor, but no demagogic stand is taken, either in favor of labor, or against capital. The chiefs are generally very fair and

[1] Proceedings of convention at Boston, 1885, p. 7.
[2] See History of the Bureau in Rep. 1876, p. 278.
[3] Rep. of Ohio Bureau, 1878, p. 37.
[4] Rep. of Illinois Bureau, 1882, p. 7.

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moderate in their utterances. This is especially true of the Massachusetts bureau, which, for many years, has assumed the attitude that the business of the bureau is to collect information for the solution of social problems, not to solve the problems themselves.[1] This, of course, is the only correct position, and it is only by taking this position that the chiefs of these bureaux can hope to secure the confidence of the community.

Sometimes the chiefs allow themselves to be drawn from this position, and utter sentiments that have a slightly demagogic ring. Thus Mr. Walls, a former chief of the Ohio bureau, denounces the current political economy, and the doctrine that wages depend upon capital.[2] The Michigan chief differs from Professor W. G. Sumner on the doctrine of free competition, and thinks that the old laws favoring the few must be put down before there is equality of opportunity for the many.[3] The Illinois chief declares that his statistics

> illustrate how labor is filling the world with wealth, and living itself in want; how labor-saving machinery is neither saving the labor of men and women, nor reducing the hours of that labor; and how the material progress of which we boast, and the prosperity of the few, may operate to intensify the poverty and distress of the many.[4]

The New Jersey chief also calls attention to the accumulation of wealth in the hands of the few, and to the fact that the laborer does not receive his fair share of the benefits of increasing civilization; but he believes that the remedy lies in the education of the masses.[5] These utterances, however, are not at all extreme, nor can they be called socialistic. The chiefs are naturally impressed with the importance of the problem they are investigating, and desire to call attention to it. So far as the chiefs are concerned, there is no reason why the information they gather should not be impartial and trustworthy.

This brings us to our second inquiry: What sort of work do these bureaux do?

[1] See remarks of Mr. Wright on position of the National Bureau. Convention at Boston, 1885, p. 128.

[2] Ohio Rep. 1878, p. 31.

[3] Mich. Rep. 1884, p. 199.

[4] Ill. Rep. 1882, p. 289.

[5] N. J. Reps. for 1881 and 1883.

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II. *The Scope of the Work undertaken by these Bureaux.*

To answer this question, we have, first, the laws establishing the bureaux; and, second, the reports of the bureaux themselves, showing what subjects they have been investigating.

This work comes under three heads, the first of which covers the normal function of such bureaux, while the last two have been added with other purposes, or from a confusion in the minds of legislators as to what should be the work of such bureaux.

The first function of these bureaux is the investigation of labor and the condition of the laboring class. The Massachusetts statute says:

> The bureau shall collect, assort, arrange and present in annual reports . . . statistical details relating to all departments of labor in the Commonwealth, especially in relation to the commercial, industrial, social, educational and sanitary condition of the laboring classes, and to the permanent prosperity of the productive industry of the Commonwealth.

The stress in this statute is laid on the condition of the laboring class as the topic of inquiry; and it was undoubtedly the position of Massachusetts as a great manufacturing state and the growth of the factory system, with its peculiar effect in creating an industrial class, that led to inquiries in this direction. In accordance with this statute, the investigations of the bureau have been directed almost entirely to the condition of the laboring class. An enumeration of the topics discussed during ten years (1874–1884), in the annual reports of the bureau, shows that the subject investigated most frequently was wages and the cost of living; next came hours of labor; then the social condition of laboring men; trades-unions and strikes; factory laws; factory children; tenement houses; savings banks, *etc.*[1]

Most of the other bureaux pursue the same objects as the Massachusetts, some of the states even copying the Massachusetts statute; as, for instance, Ohio, New Jersey, Illinois,

[1] See C. D. Wright's report to convention at Columbus, p. 11.

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Missouri, New York, Wisconsin, Iowa, Kansas, Michigan (enumerating the special topics), and California (enumerating such topics as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the probable chances of all being employed, Chinese labor, *etc.*). Pennsylvania, Connecticut, and Maryland have similar provisions.[1] Finally, the National Bureau has been established to collect information upon the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity.

In some of the states, a second function is combined with the first; namely, a description of the industrial resources of the state. The bureau is then a general statistical bureau, not particularly a bureau of statistics of labor. Thus, in Pennsylvania, the law says:

> The bureau . . . shall further collect, compile, and publish annually the productive (*sic*) statistics of agriculture, mining, manufacturing, commercial and other business interests of the state.

The annual report of the Pennsylvania bureau contains elaborate descriptions of the coal fields of the state, with maps, plans, and descriptions of machinery; statistics of the glass, petroleum, lumber, tannery, textile, flour and slate industries.

New Jersey also gives in each report statistics of specific state industries.

Most marked in this particular is Indiana. The bureau there was first entitled a Bureau of Statistics and Geology. The first report begins with a description of the State of Indiana, and general information for the benefit of intending immigrants and investors of capital. All the reports since then have been mainly statistics of agriculture, manufacturing, *etc.* The Indiana bureau is thus of no particular value as far as labor statistics are concerned. Some other western states have established their bureaux with the same object in view, *i.e.*, of advertising

[1] These statutes may be found in the proceedings of the different conventions.

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the state for the purpose of attracting immigrants, rather than of getting statistics of labor. Thus the Illinois report contains a description of the state: statistics of population, of coal production, of manufactures, of lead mines, and of public indebtedness. The last report is devoted about two-thirds to wages, profits, and cost of living; and the remaining one-third to description of coal fields and mines, *etc.*

The Wisconsin, Kansas, and Iowa bureaux all give statistics of leading state industries; and the last is expressly directed by law to give information to parties, so as to induce them to locate in the state.

Finally, a third function is sometimes imposed on these bureaux; *viz.*, that of enforcing labor laws, especially factory laws.

Thus the Missouri law says:

> The object of the department shall be . . . also to secure the inspection of all mines, factories, warehouses, workshops, foundries, machine-shops, and other manufacturing establishments, where persons, male and female, are employed, throughout the state, and the observance of the regulations herein relating thereto.

In fact, the department is called a Bureau of Labor Statistics and Inspection of Factories, Mines, and Workshops.

In Wisconsin the law says:

> The commissioner shall see to it that all laws established for the protection of the health and the lives of operatives in workshops and factories are enforced; and he shall have power to prosecute offenders against the same, in any court of competent jurisdiction. He shall report all violations of said laws.

In Illinois, by act of 1883, mine inspectors are to be appointed by a board of examiners appointed by the bureau of statistics. The bureau is also made a court, before which mine inspectors may be summoned for neglect of duty; and, upon trial and conviction, the bureau has authority to remove delinquent inspectors.[1]

In considering this variety of functions imposed upon these bureaux, it is at once evident that the third one, that of factory

[1] See Proceedings of Convention, 1883, p. 30.

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inspection and enforcing labor laws, is not properly one belonging to a statistical bureau. The function of a statistical bureau is to collect information, not to enforce laws. The latter function cripples the bureau in the performance of the first; for information will not be readily or cheerfully given to the officers of a department with whom the givers are already in conflict. It is even doubtful if the bureau should make recommendations to the legislature in favor of or against labor legislation. In all such legislation two parties are concerned, the employer and the employee; and what satisfies one will often displease the other. But for its information the bureau is dependent on both these parties, for the information derived exclusively from either would not be reliable. The better plan seems to be to assign the work of factory inspection and enforcement of laws to a factory inspector, and to allow him also to make what recommendations he may see fit for amending the laws or adding to them.

In regard to the second function, that of collecting statistics of industry and the industrial resources of the state, this evidently does not belong to a bureau of labor statistics. That it is desirable for a state to collect such statistics is true, and every state should have a bureau for this purpose. The work of collecting labor statistics might properly be entrusted to such a bureau as part of the general work of collecting statistics; and this is the plan pursued in Europe — for instance, in Prussia. Whether or not it is desirable to separate labor statistics from other statistics, and assign the work of collecting them to a separate bureau, is a question.[1] The excuse for having done so in the United States is the fact that labor statistics have become of very general interest here, and the labor problem one upon which information is especially needed by legislators. If, again, the rapid establishment of these bureaux in so many states during recent years has been due to any demagogic influence, the object sought would not have been attained by the

[1] The commissioner in Michigan recommends the union of the statistical bureaux of different departments. Rep. 1884, p. 200. The Massachusetts chief recommended it in earlier reports. The Missouri commissioner recommends concentration of work at Jefferson City. Rep. 1882.

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establishment of pure statistical bureaux. But the chiefs of some of these labor bureaux, finding it difficult to collect pure labor statistics, have filled up their reports with descriptions of the industries and resources of the state. However valuable this general statistical work may be, it is evident that it is not the work of a bureau of *labor* statistics; and that where we find a bureau doing it, it is neglecting its proper work, either consciously or unconsciously.

The above *résumé* shows what confusion exists among these bureaux as to their proper work. The point of importance to us here is, that a great mass of their reports must be thrown out from the literature of the labor question. Thus we can throw out as valueless all of the Indiana reports, the greater part of the Pennsylvania reports, and a portion of the New Jersey, Illinois, Wisconsin, and Missouri reports. They are in no proper sense statistics of labor.

We have thus established two points in regard to these bureaux; *viz.*, that their means are very insufficient for their work, and that their work is in great part not labor statistics at all.

III. *Powers and Methods of the Bureaux in collecting Statistics.*

Equally important in judging of the sincerity of the legislatures in establishing such bureaux, and the efficiency of the chiefs in conducting them, are the powers which the law confers on the bureaux of gathering information, and the methods employed by the chiefs in collecting their information. An investigation into the powers and methods of the bureaux will enable us to judge if their reports have any claim to completeness or to accuracy.

The powers of the bureaux are those commonly given to legislative committees of investigation; *viz.*, power to send for persons and papers, and to examine witnesses under oath; and said witnesses are paid the same fees as witnesses before higher courts. Such is the provision in Massachusetts. Where such a general grant was made, it seems that it conferred but very

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little power. In Massachusetts, the attorney-general gave it as his opinion: (1) That the bureau has no power, as such, to administer an oath (this difficulty was overcome by commissioning the chief as a justice of the peace). (2) The bureau has no authority to take depositions. It may send for persons and papers, but it has no power to compel attendance. (3) It may examine witnesses under oath, but can pay only $1.25 per day as fees, and four cents per mile to and from the office.[1] Other bureaux have similar powers. The New Jersey bureau has simply power to examine witnesses under oath; and the Ohio bureau has power to send for persons and papers, and to examine witnesses under oath, but for this purpose persons are not required to leave the vicinity of their residence or place of business.[2] In New York, the provision is similar to the one in Massachusetts, but a little more extensive:

> The bureau shall have power to send for persons and papers, examine witnesses under oath, take depositions, depute any uninterested person to serve subpœnas upon witnesses, who shall be paid the same fees as witnesses before a county court; but for this purpose persons are not required to leave the vicinity of their residence or place of business. And no witness shall, against his will, be compelled to answer any question respecting his private affairs.[3]

The Iowa bureau has power to subpœna and to examine witnesses under oath, and enforce their attendance to the same extent as a justice of the peace.[4] Some states provide a penalty for refusal of persons to answer questions. Thus, in Pennsylvania, there is a fine of $100 for any corporation, firm, or individual, who shall within thirty days refuse or neglect to answer questions by circular or upon personal application, or refuse to obey a subpœna and give testimony.[5] Missouri provides a fine of $25 to $100; Wisconsin a fine of $10 per day for delay beyond the time prescribed; Michigan makes it felony to testify falsely before the commissioner, punishable with imprisonment not more than five years; California provides that any

[1] Mass. Rep. 1876, p. 311.
[2] See Convention, 1883, p. 25.
[3] See *ibid.* p. 35.
[4] Iowa Rep. 1885, p. 10.
[5] Penn. Rep. 1882-3.

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person impeding or hindering the commissioner shall be fined from $10 to $50, or imprisoned seven to thirty days; Kansas provides a fine of $50. A few of the states give additional powers to the bureaux. Thus, Michigan compels clerks of counties to distribute the blanks for the commissioner, and assessors and supervisors to fill them out. California and Missouri compel all state officers to make the returns required by the commissioner. Finally in Missouri, Wisconsin, Kansas, and California, the commissioners have free access to all places of labor in accordance with their function as factory inspectors. Illinois has conferred by statute no such powers as those enumerated above on its labor bureau. It has no power to summon witnesses or administer oaths or to call upon county or local officials for returns. It is dependent entirely on voluntary testimony. Maryland gives its commissioner no power in the statute creating the bureau. In fact, it seems that in the majority of cases, the bureaux are dependent on voluntary testimony. In Illinois it is entirely so. In Massachusetts, Ohio, New Jersey, and New York, no penalty is attached to refusal to answer returns; and, from the general tone of the reports from other states, it may well be doubted if the penalties are enforced. The powers granted to most of the bureaux are insufficient for complete statistical investigation. On the other hand, it does not seem probable that more extensive powers could be enforced. The bureaux are dependent more and more on the good will of the employers of labor for their information.

There are two methods of investigation. The first is by sending out circular blanks, to be filled in by individuals; the second is by personal investigation by the chief of the bureau, or by agents. The first is the cheaper, and is resorted to by bureaux where the funds are small. The results are generally found to be lacking in completeness, owing to unwillingness or negligence of persons in answering.

The Massachusetts bureau started out with the circular-blank method, but has since almost entirely abandoned it. In 1874, of 342 school boards addressed, 206 replied; but of the answers

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very few were definite in their statements. A schedule of simple, easily answered inquiries was sent to 1530 clergymen, who were deemed better qualified to answer such questions than men in almost any other position in life; and yet only 544, or 35 per cent, answered.[1] In 1878 the Massachusetts bureau tried to get information from working-men themselves. It prepared blanks, sent notices to newspapers, and sent out 5000 circulars to working-men, requesting them to send postal card for blank to be filled. The bureau received 638 requests for blanks. Out of this number 272 were returned, 42 so imperfectly filled out as to be useless; so that the result of all this effort was 230 replies.[2] Pennsylvania still adheres to the circular-blank method, and believes it to be satisfactory. In 1882, of 11,765 blanks issued to employers, 10,385 were returned filled. 400 blanks were, in addition, issued to employees. Ohio relies mainly on blanks, but finds them entirely unsatisfactory. In 1882, out of 4707 issued, only 1685 were returned. In New Jersey blanks have been used, but they have proven to be so unsatisfactory that the bureau is to have recourse to agents. New Jersey has also returns from city, township and county officers. The Illinois bureau employs blanks, but will employ agents in future, so far as it can afford them. The Missouri bureau employs blanks to save expense. Iowa sent 600 circulars to work-women, and 16 were returned. The other bureaux use circular blanks for the most part. California sends circular blanks to be filled out by assessors of counties. In 1883, only three returns could be used out of fifty-two counties.[3] The testimony seems to be against the method of employing circular blanks, and in favor of employing agents. The convention of 1884 declared against circular blanks, and recommended the employment of special agents for special inquiries.[4]

The dissatisfaction expressed by the majority of the bureaux with the method which they are nevertheless compelled to pursue, of gathering information by voluntary circulars, is a

[1] Mass. Rep. 1879, p. 99.
[2] Mass. Rep. 1876, p. 315.
[3] Cal. Rep. 1884, p. 102.
[4] Proceedings, p. 5.

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most serious reflection on the value of the results obtained. Where such a small percentage is returned as in Ohio, it must make the reports of the bureau of no particular value. Where the returns are voluntary, it is not probable that much care will be taken to fill out the blanks and return them. On the other hand, the infliction of a penalty for non-return, or false return, is difficult and inexpedient, for it awakens great hostility. The only remedy for this state of affairs (which exists all over the world) is, in the first place, to awaken a greater public interest in the matter. This can only be done by an intelligent chief, who can make his investigations of general interest. Or, in the second place, the work of labor bureaux may take on the form of investigations, by experts, of particular questions connected with labor. This is the so-called method by special agents. For instance, take the question of tenement houses in our large cities. A general circular to owners of tenement houses would perhaps receive no answer; but an agent might go from house to house in the worst district of a city, and investigate how many families live in a room, the general sanitary condition of the house, sewerage, water-supply, *etc.* Such an agent should be clothed with powers to enter such houses and make such and such inquiries. All investigations of the social condition of the laboring class must be made in this way. False statements will be made on paper when they would not be made if face to face with the inquirer; and answers will be made to direct inquiry when no effort would be made to fill out a blank.

It seems probable that for the present the work of labor bureaux should take this form of investigation by special agents. It seems probable, also, that the power given to chiefs of bureaux to summon witnesses might be used to inquire into special questions, such as the causes of a particular strike, in the same way that so many valuable inquiries of parliamentary commissions have been made in England.

Purely statistical inquiries of an extensive nature, it does not seem possible to us that these bureaux can successfully conduct. They require an extended administrative organization,

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which we in this country do not possess. The question of labor is at the best a very difficult one to investigate, and even in so highly an administratively organized country as Prussia, attempts to investigate it have met with but indifferent success. With the meagre organization and small financial resources at the command of our bureaux, it is folly for them to attempt extensive statistical investigations.

We have now shown that these labor bureaux have insufficient financial resources, that their powers are not extensive, and their methods defective. These are the general criteria by which to judge of the probable value of their reports.

We will now turn to a critical examination of some of their results, in order to test still further their methods and determine if they give us any trustworthy information as to the condition of American labor.

IV. *The Wages of American Labor.*

The most obvious question that presents itself in the statistics of labor is that of wages. Accordingly, we find almost all the bureaux carrying on investigations with the object of ascertaining the rate of wages.

It is needless to say that the question of wages and earnings is one of very great importance in political economy and politics. It is the life question of ninety per cent of the population. It is the question an answer to which is necessary in order to answer those two other questions which are being constantly put; namely, is the laboring man in America better off than the laboring man in Europe, and is the laboring man in America as well off as he ought to be — this *ought* having various significations according to the sentiment of the inquirer; meaning sometimes, does he get a fair share of the product to which his labor contributes; meaning sometimes vaguely, do his wages allow him to live in decency and comfort according to modern notions of decency and comfort. In other words, wages or earnings are the first and most important item in determining what we may call the "condition of the laboring class."

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But although many recognize the desirability of statistics of wages, few people realize the difficulty of obtaining them. In the first place there are three distinct investigations which must be carried on before our statistics of wages are of any value. The first is the inquiry, what are the wages or earnings; the second is, what are the prices of the commodities which the laborer consumes, or the cost of living; and the third is, in what proportion are the wages applied to meeting the different items in this cost of living. Each of these questions has its peculiar difficulties when one attempts to answer it. Take for instance the answer to the first question, wages or earnings. The great majority of laborers are now paid by the day, so that the most convenient form of answering the question of wages is to give the day-wages. But in some trades men work only a portion of the year; in others they may be thrown out of work at any time; in many they are forced to be idle part of the year; in all there are days lost from sickness and accident, and this loss is not the same in different trades. From the day's wages it is impossible to arrive at the year's earnings; and the same remark is true of weekly wages, and even of monthly. If workingmen kept accurate accounts of income and expenditures, we might apply to them and get the actual annual earnings, which would give us a notion of the actual income of the working class for a certain period. Even then it might be a time of commercial depression, and the actual earnings be a false index of the general earnings — even more false than the day's wages.

Again, the wage-receiving class falls into three great bodies, men, women, and children, which of course receive different rates of wages. The distinction of sex is one easily drawn, but that between grown persons and children is not so easy to make. In England the factory acts give them an official classification into adults, young persons, and children; but factory laws are not very common in this country, or at least not commonly observed, so that very few returns from manufacturers or employers of labor would be homogeneous in this respect. It is evident, however, that in answering the question, what are wages, we must have some sort of classification, and not mix up wages of men, women, and children.

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Again, the laboring class is employed in many different occupations, requiring varying degrees of skill and strength. An average rate of wages has a good deal the same doubtful value as an average income of a millionaire and a hundred of his employees; it represents neither one thing nor another. Such an average is a mere abstraction; it is not typical of anything. Our only resource here is to group the laborers by employments and occupations, and get the average wages for men in the same occupation. By occupation here we mean the particular work to which the individual operative is assigned; as, for instance, the subdivisions of employments in manufacturing shoes. It is only by this means that we can get tables that will convey exact information, or that will be at all instructive when compared with other countries. To make such tables as these is a very laborious and difficult task — one requiring a good deal of technical knowledge and exact returns from employers or laborers, not mere guesses as to what wages are on the average.

These are the principal difficulties in answering the question, what are the wages or earnings of the laboring class in any community. Other minor difficulties may be passed over, such as whether the laborer is paid in cash or in truck; is paid weekly or monthly; whether the wages are in addition to board as they are in some employments, or exclusive of board.

The second question as to the cost of living is equally important with the first question as to wages or earnings, and is also difficult to answer. Cost of living means food, clothing and shelter; and the question is, how far will the wages of the laborer go, in providing him with food, clothing and shelter. As regards food and clothing, we must get statistics of the prices of these articles — no very easy matter when we consider that we want not the wholesale but the retail prices; that prices vary in city, town, and village; and that we want the prices of those qualities which the workingman consumes. Differences in quality make themselves especially felt, when international comparison is attempted, for the whole well-being of the working class in one country over the corresponding class in another country may consist simply in the quality of the articles they consume. The

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question of rent (the third item in cost of living) is especially difficult to solve, because high and low rent depend on the situation and character of the tenement, which it is impossible to get at statistically. We can get the number of rooms occupied by each family; but that is about all we can do by statistics. International comparison is very difficult on this account.

Finally, we must adjust the wages to the cost of living; that is, determine what proportion of the income of the laborer is devoted to payment of rent, what proportion to subsistence, what proportion to clothing, and so on. It is of course true that these proportions depend first of all on prices and on rent, for where rents are high a larger portion of the laborer's wages will be consumed in paying rent than where rents are low. But any change in rent or prices will have a greater or less effect in proportion as the part of the laborer's income devoted to that expenditure is great or small. For instance, a rise in the price of wine might not affect him at all, while a rise in the price of beer would. Again, the proportions depend on other things, as on climate, since this determines the amount of fuel, the style of house, quantity of clothing, *etc.*

When we consider all these things, we see what a difficult question it is which we have to answer: What is the condition of the laboring class as regards earnings, and what will these earnings buy of the necessaries of life?

I propose now to run through these reports and determine how far these investigations have recognized the difficulties mentioned above, how far they have overcome them, and what information they are able to give us as to the earnings of the laboring class in America.

In regard to the methods of securing this particular information, the general remarks already made will apply. Some of the investigations are already vitiated by the method employed. The methods are as follows: (1) Circulars to county officers, asking for information as to the rate of wages. This method is generally ineffective, because the officers will not take the trouble to make returns, and there is no method of verifying the returns when made. (2) Circular blanks by mail to all em-

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ployers, asking the number of employees and the average rate of wages paid. This method is not generally successful, owing to the indifference or suspicion of the employer. (3) Circular blanks by mail to employees. This also is generally unsuccessful, because only a few answer, and these incompletely. One suspects also that it is the more intelligent, the better off, who answer, and not the ignorant and poorer; so that the returns are not a fair index of real wages. (4) Personal application to employers to inspect their pay-rolls. This is undoubtedly the best method, for we get actual wages paid, number of days lost, *etc.*; but it is very laborious, and sometimes employers are not willing to open their pay-rolls to inspection. (5) Personal canvass of workingmen by agents of the bureau, who give them blanks to fill out, and assist them in filling them out. When the fourth method is unavailable, this seems the only method to pursue. Very much depends upon the skill and ability of the agent, and the bureau must rigorously examine and reject all blanks that are suspicious in the character of their replies. (6) From trades-unions and labor organizations. It would seem as if these organizations were well fitted to gather from their members just such information as is wanted; but none of the bureaux have as yet availed themselves of such help.

With these criteria of methods of getting information, and the knowledge of what is required to answer the wages question, we can readily judge of the value of these investigations. I regret to say that we must reject by far the larger number of them as practically worthless. We can dispose of these very rapidly.

The New York, Connecticut, Maryland, Kansas, and Washington bureaux have as yet made no investigation of wages. The following bureaux employ defective methods. Those in Indiana and California depend on the first method, returns from county officers. Such returns are not statistics; they are mere guesses on the part of probably incompetent persons, with no means of controlling them. Those in Wisconsin, Missouri, Ohio, Pennsylvania, and Iowa rely on the circular-blank method. In Ohio, only 40 per cent of the circulars are returned; in

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Wisconsin, only 50 per cent; and in Missouri, returns from employers were too incomplete to publish. In none of these states is any attempt made to classify the laborers scientifically, or to get at the cost of living. None of these returns can be said to be of any value.

We have thus disposed of twelve bureaux. They have either made no efforts at all to get statistics of wages, or their attempts have been entirely crude and insignificant. The remaining four have made efforts, and published returns which are much more elaborate and pretentious than any of the above. Have they come any nearer solving the question, what are the real wages of American labor?

The New Jersey bureau has made elaborate returns of wages in its last three reports. In the report for 1884 more than two hundred pages of detailed statistics were published. These returns were made by working-men, and by employers. The working-men (returns for about nine hundred are collated in the summary) returned the number of hours employed daily; earnings, weekly or monthly; actual annual income; number of days lost, and cause; number in family; number working for wages; and cost of living. So also employers returned, for 3718 of their employees, number of men, women, boys, girls, apprentices; piece-workers and time-workers; highest, lowest, and average weekly wages; average annual earnings of each class of employees for one year. It seems as if we had here some valuable statistics of the wages of American labor, and the cost of living. A very slight consideration will dispel this illusion. In the first place, some of the returns are such round numbers that it is at once apparent that they are not based on any actual records, but are only estimates. Such are the working-men's returns of earnings from July 1, 1883, to July 1, 1884. These are always round numbers like $600, or $1000. Such are the employer's returns of annual earnings of employees. Such are the workmen's returns of cost of living, always in round numbers, evidently not based on actual expenditure. These may be statistics of the opinions of experts on these matters, but they are not statistics of actual wages, or actual

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cost of living. The fundamental returns are not accurate. It may be added, that the returns are not numerous enough to base reliable statistics of wages on; and they are not collated or compared with the cost of living in such a way as to throw very much light on the actual condition of the working-men of New Jersey. These returns have no scientific value in solving the question of wages.

The Michigan bureau collected in 1885 statistics of wages, by means of postal cards, from 11,439 men receiving daily, weekly or monthly wages. The method is not a good one; but the method of arranging and collating is very good. Not only are the average wages given, but the men are classified according to the rate they get, as in the following table.[1]

Daily Rates.	Number of Persons Receiving.	Average Daily Wages.
From $3.15 to $7.00 both inclusive . . .	144	$3.82+
" 2.50 to 3.00 " " . . .	713	2.66+
" 2.10 to 2.35 " " . . .	344	2.24+
" 1.00 to 2.00 " " . . .	5,572	1.60+
" .25 to .90 " " . . .	166	.69+
	6,939	1.77

I shall have something to say hereafter as to the value of combining with the average wages the number of persons in groups above and below the average.[2] Suffice it to say here, that the Michigan method of classification is a correct one so far as it goes. What we want now is more extensive statistics, classification by occupations, and then statistics of prices and of the different items in working-men's expense accounts. The Michigan bureau is on the right track, and deserves praise for what it has done; only its statistics are as yet too incomplete to be of much value.

The Illinois bureau has made a very notable effort to determine the earnings of laborers, the prices of commodities, and how earnings are spent. Discarding the circular-blank method,

[1] Mich. Rep. 1885, p. 220.

[2] See *post* p. 80.

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it sent out its agents and induced working-men to fill out blanks under the direction and with the aid, when necessary, of these agents. After rejecting doubtful and imperfect returns, there were 2129 families, numbering 9834 persons, living in 51 different towns, and engaged in 163 occupations, for whom returns were given. The average earnings of heads of families varied from $210 to $1608, averaging $525.27, which, by the earnings of the rest of the family, was increased to $588.[1] The average expenses of families was $507.56, of which amount 42 per cent was for food, 23 per cent for rent and fuel, 21 per cent for clothing, and the remainder for miscellaneous purposes.[2] The prices of the chief commodities are also given. The report declares that 24 per cent of the Illinois workmen fail to make a living; 9 per cent barely make both ends meet; 67 per cent have a surplus. This effort of the Illinois bureau is in many respects admirable. It has been conducted with great industry, and the returns are analyzed and commented upon with a good deal of skill and talent. Nevertheless, they are not complete enough to be satisfactory. A close examination of the individual returns show them to be so divergent, that only a very large number of returns could give any trustworthy average. Again, the number in each trade (2129 returns for 163 trades; *i.e.*, 13 for each trade) is so small, that it cannot be taken as a safe basis of average. The averages for each trade, too, are gained from an arbitrary number of cases, without regard to the actual number of men in different branches of the trade. Thus, under the head of building trades we find 46 bricklayers and 3 hod-carriers; while it is at once evident that an average drawn from such figures would not be a true average wages for the building trade, unless the number of bricklayers and hod-carriers is really in that proportion. In short, the Illinois bureau needs to extend its observations more widely, classify its occupations more accurately, and draw its averages more scientifically.

We turn finally to the Massachusetts bureau. This bureau enjoys the highest reputation of any of the bureaux, especially

[1] Ill. Rep. 1884, p. 263. [2] *Ibid.* p. 336.

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in all investigations concerning wages. The Illinois secretary refers to the Massachusetts returns as constituting the best product of statistical inquiry on this subject.[1] Its reports have a wide circulation, both in this country and in Europe; and any conclusion reached in them will be accepted with a good deal of confidence. This reputation is deserved. We have no bureau of labor statistics in this country that has done such an amount of good work. Its chief, Mr. Carroll D. Wright, has an international reputation, and is perhaps the highest authority in this country on all questions connected with statistics of labor. It will, therefore, repay us to examine carefully whatever investigations the Massachusetts bureau has made in regard to the statistics of wages.

The Massachusetts bureau has made repeated investigations in regard to wages. These are found in the reports for 1874, 1876, 1879, 1882, 1883, and, the most comprehensive of all, in 1884. This last investigation comprises three parts: comparative wages, 1883, Massachusetts and Great Britain; comparative wages, 1860–1883, Massachusetts and Great Britain; comparative prices and cost of living, 1860–1883, Massachusetts and Great Britain. The statistics are very elaborate, occupying no less than 330 pages of the report. The conclusions arrived at are very definite, and are expressed in exact figures; viz., that the Massachusetts workman receives 62 per cent more wages than the British, and, taking into account rents and the cost of living, is 42 per cent better off. The report excited wide-spread interest, both in this country and in Europe; and the edition was exhausted in a very few days. There was such a demand for it that the bureau has found it expedient to reprint the principal part of it in the report for 1885. No modifications are made in this second edition; so I presume the report and its conclusions have been accepted without dissent everywhere. The bureau evidently regards this as a crowning effort; for it announces that it will now turn its energies in other directions, gathering only sufficient wage statistics from year to year to keep up the record of fluctuation in wages for Massachusetts.[2]

[1] Ill. Rep. p. 345. [2] Rep. 185, p. 106.

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Such being the importance of this investigation, we now turn to a critical examination of it. The object of the investigation was to compare the wages of Massachusetts working-men with those of Great Britain. It is evident, however, that the correctness of this comparison depends upon the correctness of the figures representing the wages for Massachusetts and Great Britain respectively. If these figures are incorrect or untrustworthy, then the whole comparison falls to the ground. I propose now to test the trustworthiness of the figures representing the Massachusetts wages. The Massachusetts bureau gathered its information through personal agents from original sources (meaning by original sources the pay-rolls of great manufacturing establishments, the official wage list agreed upon in England between trade societies and employers) and from other reliable sources. In Massachusetts, pay-rolls of 210 establishments furnished the wages.[1] The investigation covered 24 industries, which represented 75 per cent of the total industrial product of Massachusetts.

It was not attempted to get the actual wages of all the laborers employed, but only of about ten per cent in each industry, enough to be representative. Thus wages were obtained of about 35,902 out of 279,202 employees (12.86 per cent).[2] Elaborate tables are made out of the returns from each industry, in which are entered the number of workmen doing each kind of work (for instance, in cotton goods, spinners, weavers, carders, *etc.*), with their weekly wages. Each separate return is entered by itself, and each group is distinguished into men, women, young persons, boys, and girls. Each group is further designated according as the wages are actual average wages, are exceptionally high or low, are paid by the day or by the piece. All this is done by an ingenious system of lettering after each group. These are the original tables, on which all the others are based and by which the later ones can be verified. They are very elaborate, and are carried out into the minutest subdivisions of occupations for each of the twenty-four industries. A specimen is as follows:

[1] Rep. 1884, p. 283. [2] *Ibid.* p. 289.

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COTTON GOODS.

Occupations.	Number.	Weekly Wages.
CARDING.		
Carders, *mdac*	2	$7.20
Carders, *mdav*	18	7.02
Carders, *wpav*	26	6.66
Carders' boys, *cdac*	3	3.60
Card grinders, *mdl*	12	8.10
Card grinders, *mdh*	12	9.00

The first contraction means men, daily actual wages; the second, men, daily average wages; the third, women, piece-work, average wages; the fourth, children, daily actual wages; the fifth, men, daily low wages; the sixth, men, daily high wages.

These tables are of very great interest and value. The way in which they are elaborated, giving the exact employment, distinguishing men, women, young persons, and children, showing whether the wages are actual or average wages, are unusually high or unusually low, day or piece, all this is admirable. It is safe to say that no such exhibit of the earnings of the working classes has ever before been made, either in this or any other country. It reveals on a large scale, and for over two hundred establishments, what has hitherto been known only to individual employers for their own establishment. That the Massachusetts bureau was able to accomplish this is a great proof of the efficiency with which it is conducted, and the confidence with which business men, who have given this information to it, must regard its chief, Mr. Wright.

The question now is, can we combine these figures in such a way as to get an average wages? This the Massachusetts bureau attempts to do. It first gets an average wages for employees in the same occupation (meaning by occupation, the sub-divisions, such as carding, card-grinding, *etc.*). For example:

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OCCUPATION.	NUMBER.	AVERAGE WAGES.
Carders, men	46	$7.11
Carders, women	64	6.60
Carders, boys	17	3.02

From this table are excluded cases of high and low wages.

I believe these tables, also, to be of very great value. The individuals in each case belong to a homogeneous class, so that the average wages is somewhere near the actual wages of the men of the class. There is a good deal of margin, even here; as among men carders there are:

1 at $9.60	2 at $7.20
1 at 9.30	18 at 7.02
5 at 8.70	11 at 6.30
1 at 8.10	4 at 6.00
3 at 7.50	Average, $7.11

There are considerable fluctuations, as one man gets $9.60, *i.e.*, $2.49 more per week than the average or 35 per cent above the average, and four men get $1.11 below the average which is a fluctuation of 18 per cent below. These are pretty wide limits, but the cases are not numerous. Twenty men out of forty-six, *i.e.*, nearly one-half, get very near the average wages: *viz.*, $7.20 and $7.02. Such an average we can get on with, and perhaps make use of.

The Massachusetts bureau now goes on to form further averages, with which we must deal much more cautiously. These are the average weekly wages paid to all men, the average weekly wages paid to all women, to all young persons, and to all children in each industry. This average must be viewed with great suspicion. For instance, the average weekly wages paid to all men in the cotton goods industry is $9.44. What does this average mean? Of what is it composed? It is made up of the wages of men in a great variety of occupations, from overseer down to teamster, occupations requiring very different degrees of skill and of strength. What does it show us?

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Are wages high or low in the cotton industry at $9.44? If we think of overseers, these wages are very low; if we think of common truckmen, they are high. Actual examination shows this to be the case. The average wages paid to overseers was $30.00; the average wages paid lapmen was $6.00. That is, we have a variation of 317 per cent above, and of 63 per cent below the average. If you take wages of individuals instead of average wages for occupations, the fluctuation will be still greater, some overseers receiving as high as $36.00. What shall we say to an average made up of such extremes? The difficulty is, that such an average gives us no notion of what wages the mass of the men get. If this $30.00 aberration is an exceptional case, and the $6.00 one also, the average $9.44 may be near the earnings of the men in the cotton goods industry. But one man at $30.00 influences the average about six times as much as a man at $6.00, so that, for every man at $30.00, there must be six at $6.00.[1] If therefore there should happen to be a considerable number of men at $30.00, it would show that the average $9.44 was much too high for the mass of workmen; in other words, that it was no true average.

A familiar illustration or two will make my meaning clear. I make a statement that the average age of my friends is 20 years. What impression do I wish to convey? The impression of course that most of my friends are in the neighborhood of 20 years of age. If now my friends are 18, 19, 20, 21, and 22 years of age, the average 20 is a useful and true expression. If however they are 10, 15, 20, 25, and 30, it is less useful; and if they are four of them 10 years old, and one of them 60, the average 20 is still numerically correct, but it is absurd and untruthful in the impression it gives. The average age of my college class on graduation was 22 years and 6 months, but the majority of the men were not more than 21. If, when W. H. Vanderbilt was president of the New York

[1] 1 at $30.00 = $30.00.
6 at 6.00 = 36.00.
7 = $66.00.
Average = $9.43.

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Central Railroad, we had obtained from statistics the average wealth of all persons employed by the company in its Forty-Second Street station, of what value would it have been? This is the trouble with this average wages of men employed in the cotton goods industry; it embraces men of too widely divergent economic condition.

This case of the cotton goods industry is not an isolated case. Out of the twenty-four industries for which returns are made, there are six other cases as bad or worse than that of cotton goods. The worst case is that of worsted goods, where the average wages are $8.82 for men; the highest for any occupation being $38.40, and the lowest $3.00. This shows a fluctuation of 336 per cent above and 66 per cent below. This must, of course, be an exceptional case, as the $3.00 for men shows. Careful examination shows that in all cases except three (out of twenty-four), the average wages are nearer the lowest wages received than the highest, which shows that the average is higher than the majority of the men get. For, the highest wages being further off from the average than the lowest, each single individual above exerts more influence than one below; *i.e.*, there must be a larger number below than above. The result of this is that it vitiates the average figures for each occupation, and vitiates any comparison between occupations. The average wages for men in cotton goods is $9.44; but if I took a hundred men in the cotton goods industry, I could not tell how many men were actually receiving those wages. A majority may be above that, *i.e.*, considerably better off than the average indicates; more probably a majority are below that, *i.e.*, considerably worse off than the average indicates. Again, the average weekly wages for men in worsted goods is $8.82. Are a majority of these men worse off than those in cotton goods? You cannot say. As we have just seen, there is an abnormal case of low wages in worsted goods, which may bring the average down so that it is in reality too low.

So much for the average wages of men in each industry. What I have said in regard to men would apply also to the

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average wages of women, of young persons, and of children, but with less force, because their wages vary less. There are no overseers among them, and they have less variety in occupation.

We come now to a second average, even more suspicious than this first one. In the preceding case we had the average weekly wages of men, of women, of young persons, and of children, separately.[1] The bureau combines these, and gets the average wages of all employees in each occupation; for instance, in cotton goods it is $6.45. This average is of absolutely no value. It represents nothing in the world. It is much too high for children and young persons, and too low for men. It is an average whose fluctuations are from $30 on one side (highest average wages paid to men in any occupation) down to $1.89 on the other (lowest average wages paid to children in any occupation), *i.e.*, 365 per cent above, and 70 per cent below.

Any comparison on this plan between average wages in different industries is entirely absurd, because they are high or low according to the number of women and children employed in each industry. For instance, we find the highest weekly wages is given in building trades; *viz.* $14.99. But in looking at the detail tables we find that men only are employed in that trade, while in cotton goods the average $6.45 is made up from the wages of 1728 men, 4815 women, 460 young persons, and 508 children. As a matter of course, wages would be higher in the former case than in the latter. Curiously enough Mr. Wright sees this himself, and acknowledges it later on in his report.[2] But if the average is such an untrustworthy one, why does he spend so much labor in seeking it?.

We have but one more average to present. The bureau averages the average wages of all employees in all the twenty-four industries, resulting in an average weekly wages of $10.31 for

[1] In Cotton Goods.

Average.	Men, ...	$9.44.
"	Women, ...	5.90.
"	Young persons, .	4.30.
"	Children, . . .	3.28.

[2] Rep. 1884, p. 414.

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all employees.[1] Of course, if our previous criticism was correct, this average is fallacious, because it rests on previous averages which are fallacious. It does not represent the wages either of men, of women, of young persons or of children. It does not represent the real wages in any single occupation, cotton goods or building trade or any other. It does not represent either skilled labor or unskilled, either overseers or common laborers. You can do nothing with it. It would vary from year to year according to the number of children employed in factories. If textile factories increased greatly, average wages would be decreased although every man in the community might be receiving the same wages as before. If you passed and enforced a strict factory law excluding children from factories, the average wages would go up although every working-man might be receiving the same wages, and might even find it more difficult to support his family because the children no longer aided. Such an average gives you no basis for comparison with other places. Suppose we discover that average wages in Pennsylvania are the same as in Massachusetts, *viz.*, $10.31 per week. What does that show? That workmen are equally well paid in Pennsylvania and in Massachusetts? Not at all. We know that in Massachusetts women and children are extensively employed, while in Pennsylvania, in great industries like the coal and iron industries, scarcely any women and children are employed. This difference in conditions vitiates any comparison of wages between the two states on the basis of the average weekly wages.

Perhaps I have now shown sufficiently the fallacious character of these averages drawn by the Massachusetts Bureau of Labor Statistics. This does not affect the validity of the original detailed tables. These, if they are taken, as they are said to be, from the actual pay-rolls of 210 establishments, are of very great value in forming a judgment concerning the wages received by American laborers.

I propose now to point out where the Massachusetts bureau made its mistake in treating these original tables, and how the bureau, by regarding one or two well-known principles of statis-

[1] Rep. 1884, p. 305.

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tical science, might have given us information of considerable value instead of these fictitious averages.

In the first place, it is a principle of statistical science that where you are trying to get an average, the larger the number of individual cases the greater the value of the average; for in a large number of cases the exceptional ones disappear or counterbalance each other. For instance, take the average duration of human life; one of my friends may die at 60 and another at 40, giving an average of 50; but that average is of no value, because it rests on too small a foundation. If, however, I take a whole country during several years, and average the deaths and the population, I can arrive at an average expectation of life which will be of some value; and, as a rule, the further I extend my observations the more reliable will be my result. I must, however, take cases that are homogeneous, that belong to a class. What is a class depends on the purpose for which the statistics are to be used. If a life-insurance company is insuring healthy lives, it is of no use for it to extend its observations to the average duration of life among diseased men. It does not help the result; it vitiates it. They are all men, but they are not all men of the class it is insuring.

The application of this principle to these wage statistics is that we must rigidly separate wages of men, of women, of young persons, and of children. They do not belong to the same class; they do not perform the same function. Men's wages generally support a family; women's wages support single women or supplement a man's wages; young persons' wages support generally a single individual; children's wages go into the family receipts for what they are worth. These different wages do not belong to the same class, and hence *must not be averaged.*

A second principle of statistical science is that an average may be a mere numerical average, or may be typical. In the first case it is a mere abstraction; in the second case we mean that it actually shows about what the real condition of things is. I repeat my former illustration. The average age of my friends is 20. If my friends are one of 60 years and four of 10 years, my average is a mere numerical abstraction. If my friends are

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18, 19, 20, 21 and 22, then the average is typical; my friends are really about that age. Statistical science protects itself against being deceived by these mere numerical averages, which are typical of nothing, in two ways. One is to attach to the average the extremes of fluctuation, *e.g.*, average age 20, fluctuation to 19 below and 21 above, or fluctuation 5 per cent above and 5 per cent below. It makes no difference now how many friends I have; I know they must all be near the age of 20. In the other case (average 20, one at 60 and four at 10 years; fluctuation above, 200 per cent; below, 50 per cent) I do not know anything about the ages of my friends. A second way is even more efficacious in controlling averages. This is, to give some indication of how many are above and how many are below. For instance, the average 20 may be reached by a combination of one at 60 and 20 at 18. I put it then in this way: average 20, one at 60, 20 at 18. That shows me that, although the fluctuations are very great, yet my friends are most of them really in the neighborhood of 20 years. Or I may have a combination of this sort: one at 10, 20 at 18 and a half, and one at 60. The average is still 20, but I put in the fluctuations as follows:

4½	per cent of cases are			200	per cent	above.
4½	"	"	"	"	50	"	below.
91	"	"	"	"	7½	"	"

This shows me that my average is typical, for nine-tenths of the cases vary only seven and one-half per cent from the average.

This is what the Massachusetts bureau ought to have done with the wages of men in each industry. It does give the highest and lowest rate of wages; but it does not show how many individuals are above and how many below until it gets the average of all employees — men, women, and children — which is a false average to start with.[1] To illustrate my meaning, I have classified the men in the cotton industry. I reach a table of this sort:

[1] See Rep. 1884, p. 298.

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23	per cent receive from			$ 6.00 to	$ 7.00	weekly.
13.8	"	"	"	7.00 to	8.00	"
12.7	"	"	"	8.00 to	9.00	"
13.2	"	"	"	9.00 to	9.44	"
7.9	"	"	"	9.44 to	10.00	"
7.5	"	"	"	10.00 to	11.00	"
5.4	"	"	"	11.00 to	12.00	"
8.5	"	"	"	12.00 to	13.00	"
2.4	"	"	"	13.00 to	14.00	"

What I want to point out here is that, although the average wages for men is $9.44, 62.7 per cent receive less than the average, and that nearly one-fourth of the men receive wages very much below the average; *viz.*, $6 to $7. Therefore when you say that the average wages for men in the cotton goods industry is $9.44, you are conveying no notion of what the mass of men are really earning in that industry. What the bureau ought to have done, instead of figuring out an average wages for all men, is to have figured what proportion of men get successive rates of wages; what proportion get $10, and so on. The bureau does attempt something of this sort, but does it for occupations rather than for individuals; *i.e.*, bases it on a fallacious average.[1]

The conclusion, then, of our examination of the Massachusetts report is as follows: The average wages for men in each industry is a fallacious one. The average wages for all employees (men, women, and children) is absurd, because it confuses entirely different classes. The average wages for men in each industry is probably higher than the majority of men get, and ought to have been controlled by giving the number of men in each class above and below.

The curse which accompanies these fictitious averages is that they are used for comparison with other countries, or with past periods. Thus the Massachusetts investigation gets an average weekly wages for laborers in the same industries in Great Britain, and shows that the wages of Massachusetts labor are 62 per cent higher than those of English labor. People who

[1] Rep. 1884, p. 307.

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read this report seize on this single number, 62 per cent, and look upon it as an established fact that wages are 62 per cent higher in Massachusetts than in Great Britain. Mr. Wright, the chief of the Massachusetts bureau, probably knows of how little exact value this return is; but he seems to lend to it his authority, and that of his bureau, by publishing in italics (page 302) as the result of his long statistical investigation:

The general average weekly wage paid to employees in twenty-four manufacturing and mechanical industries in Massachusetts is 62+ per cent higher than the general average weekly wage paid in the same industries in Great Britain.

I will not follow out the other combinations by which the Massachusetts bureau tries to show how much higher the wages in Massachusetts are than in Great Britain. I do not even dispute the fact that they are higher; but I contend that the method by which these conclusions are reached is not scientific. In fact, I doubt very much if we can express in a single figure how much higher wages are in one country than in another. The only way we can form a judgment on such a question is to take the opinion of experts, without requiring them to give us exact figures.

I shall pass over the second and third parts of the Massachusetts bureau wage-returns without comment. The second part gives wages from 1860 to 1883 in Massachusetts and Great Britain, and a similar result is reached, *viz.*; that wages in Massachusetts are 77+ per cent higher than in Great Britain. The third part consists of prices of the necessaries of life, taken from retail price-lists of different stores. These returns we have no means of controlling, and there is every reason to suppose that they are correct. This same part has an interesting attempt to discover in what proportion wages are used to meet the different items in the cost of living. In this part, too, the bureau seems to be carried away by a passion for averages. Instead of contenting itself with the returns from nineteen families in Massachusetts in 1883, it averages with them returns for Massachusetts in 1875, and returns for Prussia. The different items in the cost of living in Prussia can scarcely be the

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same as in Massachusetts, so one does not see what is gained by averaging the two.

We have thus concluded our survey of the efforts of these sixteen bureaux of labor statistics to investigate the earnings of American labor, the fundamental question of the labor problem. The results are at first glance disappointing. The greater number of the investigations are inadequate. Only two of the bureaux seem to have made really systematic efforts to determine the wages of the laboring class. Of these, the Illinois investigation seems to lack completeness and accuracy. It is an interesting exhibit of the earnings and expenditures of a large number of families belonging to the laboring class, but it cannot be taken as an answer to the question, what are the earnings of the laboring class. The Massachusetts investigation seems to be much more complete and satisfactory. The method (from employers' pay-rolls) seems good. The classification also seems good, and gives us exact information. It does not include all occupations, because it was intended primarily for comparison with Great Britain. It might be extended to include other occupations, such as railroads, *etc.* The method could not include all laborers, because many do not have regular trades or regular employment. Again, the averages are of doubtful value, because all such averages are of doubtful value. We cannot reduce the complex phenomena of human life to a single number or to a single sign. Such as they are, the Massachusetts returns still remain the best statistics we possess of the wages of American labor. Most of the bureaux are too inadequately fitted out to attempt any such investigation. It seems wisest for them to turn their attention to the investigation of special problems which come up from time to time, such as the condition of a single class of workmen, or the cause of certain evils, such as strikes, *etc.* Confined to such unambitious work, these bureaux may do good. Undertaking wider investigations, for which their legal powers and financial resources are inadequate, they will be sure to fail.

RICHMOND MAYO SMITH.

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LEGISLATIVE INQUESTS.

THE constitution of the State of Massachusetts declares, in chapter i., section iii., article vi., that "The House of Representatives shall be the grand inquest of this Commonwealth." There is a good deal of rhetoric in the constitution of Massachusetts, and possibly this provision is not to be regarded as having ever been intended to be a precise definition of the powers or functions of a legislative assembly. I believe it is the only express declaration which can be found in any of the American constitutions of the right or duty of a legislature to act as the grand inquest of a state, but it is a very accurate statement of the conception of the scope of their functions entertained by the legislatures of some states, particularly that of New York. Those conceptions have lately been the subject of judicial decisions, in cases involving the power of legislatures to punish witnesses for contempts, in the course of certain inquiries, investigations or inquests conducted by them; and since the decision of the United States Supreme Court, in Kilbourn *vs.* Thompson,[1] they have also become the subject of general discussion, which, notwithstanding the judicial contributions to it, is still in some respects an open one.

There never has been any question of the right of legislatures, any more than there has been of the right of legislators, to make merely naked inquiries. The question has arisen upon the existence of a power to make the inquiries effective by punishing as contempt the refusal to answer them. At this point there is a difficulty in consequence of the popular and, in some cases, even judicial confusion of mind over the division of the powers of government into the three parts. The legislative, executive and judicial departments, it is argued, are distinct and exclusive. No one of the three can ever exercise any of the powers of the others. The power to judge of contempts,

[1] 103 U. S. Reports, 168.

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and to punish for them, is a judicial power; consequently a legislature can in no case exercise it, except where it is expressly conferred. This is, of course, not altogether true. There is, theoretically or actually, no such clear-cut division between the powers of government as has been contended. Both the executive and legislative departments have always exercised certain judicial powers as ancillary to their own. In nearly all of the American colonies the upper house of the colonial legislature acted as a court. In the state of New York the Senate, with some of the judges and the chancellor, constituted the court of last resort until 1846. In every state of the Union except Nebraska and Oregon the upper house of the legislature still constitutes or remains part of the court for the trial of impeachments. The legislature of Massachusetts is entitled to this day "The General Court"; and, without exception, so much of the judicial power as is necessary to enable them to judge of the election of their own members is conceded to reside in both legislative houses of all the states of the Union.

Now undoubtedly the power of legislatures to make inquests, investigations, or effective inquiries, which has been called the "inquisitorial power" — and that phrase, although it sounds offensive, is perhaps the most accurate which can be applied to it — is, as the courts have always held it to be, a quasi-judicial power. If legislative bodies could not exercise judicial functions in any case, there would be an end of the matter. But they can, and do, and must. The occasions and manner of the exercise of this particular judicial function, as well as its proper limitations, are, however, live questions.

There is naturally a distinction between the exercise of the inquisitorial power by the national and by state legislatures, since the houses of Congress possess only such powers as are conferred upon them, while the state legislatures have all the legislative powers which are not withheld from them. State legislatures may therefore have an inquisitorial power, just as they have a power of granting franchises, which in the case of Congress would be *ultra vires*.

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In 1821 the United States Supreme Court, in the case of Anderson *vs.* Dunn,[1] rendered a decision affirming the possession by Congress of a general power to punish for contempts analogous to that exercised by courts of justice; and resting upon this decision, Congress exercised at its discretion for many years a general inquisitorial power. In most cases that discretion was appropriately enough used, and no question was made of the right of Congress to the information it sought to obtain. In 1880, however, the House of Representatives undertook to investigate the affairs of a "real estate pool" in the city of Washington, in which Jay Cooke and Company were said to have a large interest — Jay Cooke and Company being at that time, according to the statements contained in the resolution directing the investigation, largely indebted to the United States and being also in bankruptcy in the United States Court for the eastern district of Pennsylvania. It was also stated that the indebtedness to the government had been incurred through the improvidence of a Secretary of the Navy, and that the trustee in bankruptcy had settled the affairs of the firm to the disadvantage of the creditors (including the United States), by reason of which the courts were powerless to afford adequate redress to these creditors. The investigation was conducted by a committee of the House, and Hallett Kilbourn was subpœnaed before it and required to testify as to the names and residences of the members of the real estate pool, and also to produce certain papers relating to it. This he refused to do. Thereupon the fact of the refusal was reported to the House, and Kilbourn committed by it for contempt. Subsequently he brought an action against the officers of the House, and the Supreme Court held his imprisonment for such contempt to have been illegal. The court held that the House might punish its own members for disorderly conduct, that it might compel the attendance of members, and that either the House or Senate might in impeachment proceedings punish a witness for refusing to testify. The court also said:

[1] 8 Wheaton, 204.

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Each House is by the constitution made the judge of the election and qualification of its members . . . and it may be that a witness would be subject to like punishment at the hands of the body engaged in trying a contested election, for refusing to testify, that he would if the case were pending before a court of judicature. . . . Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.

The proposition that the general power to punish for contempts exists as one necessary to enable either House to exercise successfully its function of legislature, the court says "we do not propose to decide in the present case." It thus explicitly refused to pass upon the proposition which it is popularly supposed to have decided adversely. The court clearly indicates, however, its opinion that such a power does not exist. Indeed, if the dicta contained in the opinion in this case are sound, it is difficult to see where the Houses of Congress would derive power to prevent their invasion by a mob or to punish any disorder whatsoever committed in their very presence by others than their own members. As to the particular inquiry undertaken by the House in this case, the court held, in substance, that it was into a matter then pending before a court of competent jurisdiction, and that there was no inadequacy of power in the courts to give redress which could lawfully be supplied by any investigation or act of Congress. The court says :

No suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By "fruitless" we mean that it could result in no valid legislation on the subject to which the inquiry referred.

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The gist of the decision, so far as it goes, is that Congress cannot lawfully investigate, that is, use its inquisitorial power upon matters concerning which it cannot legislate. But it may be doubted whether this decision goes far enough to settle all the questions which must arise in the exercise of the inquisitorial power of Congress, and whether or not it is to be received as the ultimate view of the Supreme Court upon this question; for although the resolution of the House of Representatives directing the investigation in this case did not direct the report of any recommendations concerning the same, and did not indicate any intention of legislating upon the subjects inquired into, it would appear to undoubtedly follow from the opinion, that even if the resolution had been so worded, the court would still have considered whether or not the House had jurisdiction; and further that if the House should have been found to have acted within its sphere in undertaking the investigation, the court would still consider the question as to whether or not the examinations in the course of such investigation exceeded the jurisdiction of the House making them. In the light of these views, and of the views of the court of the inviolability of the private affairs of the individual, it is difficult to see how Congress can possibly conduct lawfully such investigations as that of the Potter committee into the matter of the cipher telegrams, or that of the several committees appointed to investigate the relation of labor and capital, Southern outrages, *etc.*, or that now being made into the organization of the Pan-Electric Telephone Company. Certainly committees in these cases may receive such testimony as witnesses may choose voluntarily to give. But if these investigations were not within the jurisdiction of Congress, it could not punish witnesses for a refusal to testify in them; and if they were or are not within that jurisdiction, I do not see how the committees can even compel witnesses to take an oath to testify truly. In these cases it may be that the inquisitorial power was invoked for political ends rather than as an auxiliary to legislation; but it is easy to conceive of a case in which its exercise would seem necessary, such for instance

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as an inquiry by the House Committee on Foreign Affairs into the status and abuse of Chinese subjects in this country, with a view of seeing whether or not certain new legislation is called for in order to fulfil our treaty obligations. As the law stands any attempt at such investigation would be futile.

In the states the situation is a different one. The state constitutions, without exception, declare that the legislative power is (or shall be) vested in the legislature. The state legislatures, therefore, exercise the whole legislative power; and if the right to make inquests is embraced in that power or, as a semi-judicial power, is an incident thereto, then the state legislatures certainly possess it. In twenty-four states[1] the constitutions expressly enumerate the power to punish for contempt among the legislative powers, by clauses stating that the legislature may punish its members or other persons for contempt in case of disorder in its presence, and in order to enforce obedience to its process, and consequently or impliedly, in order to conduct such proceedings as require the issue of such process. Several constitutions also contain a provision that the legislature shall have "all other powers necessary for the legislature of a free state." Most of these constitutions have been drawn in recent years, and the definitions of the rights of persons and of the legislature are so detailed that it may justly be argued from them, that clauses like those conferring the power to punish for contempt, are to be construed as limiting rather than as enabling provisions. In the remaining states of the Union, the constitutions are silent on the matter, though in some of them, as in New York, statutes have been enacted regulating the exercise of the power.[2] Those statutes and the power in question in such states are based upon the express grant of the whole legislative power, upon the inheritance through the colonial legislatures of the power of Parliament, and upon the necessity for the power itself. The power

[1] Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and West Virginia.

[2] Revised Statutes of N. Y., part i. ch. vii. tit. ii § 13; vol. i. p. 154.

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of a state legislature in a juridical sense is absolutely unlimited, except by the express restrictions of the fundamental law.[1]

It is [says Mr. Cushing] general and unlimited, and extends to all subjects of legislation, except in those particulars wherein it is expressly restrained as above stated. Consequently, when a question arises whether a given subject is within the constitutional power of a state legislature, the inquiry should be, not whether it is conferred specifically, but whether it is withheld in terms, or by necessary implication. If it cannot be said affirmatively that the power in question is withheld, then it exists under the general grant. If the inquiry leads nearly to a doubt of the power, the doubt is in favor of its being granted.[2]

In the states which had previously been colonies the constitutions adopt the common law of England, in so far as it formed part of the law of the colony on April 19, 1775, and this included the *lex et consuetudo Parliamenti*, which, says Baron Parke, forms part of the common law of England.[3] Of Parliament, De Lolme said that it had power to do anything except to turn a man into a woman. Certainly the list of parliamentary commissions shows the exercise of inquisitorial power over the widest range of subjects, and the power of Parliament to institute inquiries, to order the attendance of witnesses, and in the event of their refusal to attend or to testify, to punish them for contempt, has been repeatedly upheld by the English courts as part of this *lex et consuetudo Parliamenti*.

Lord Campbell quotes the following opinion of Chief Justice Wilmot, which he describes as important because it applies equally to the Houses of Parliament. Lord Wilmot says:

The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution. It is a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt acted in the face of the court; and the issuing of attachments by the supreme courts of justice in Westminster Hall for contempts out of court, stands on the same immemorial usage which support the whole fabric of the common law. It is as much the *lex terrae*, and within the exception of Magna Charta, as the issuing

[1] Bank of Chenango *vs.* Brown, 26 N. Y. 469. People *vs.* Dayton, 55 N. Y. 380.
[2] Cushing, Law and Practice of Legislative Assemblies, sec. 717.
[3] Kielley *vs.* Carson, 4 Moore, P. C. Cases, 62.

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of any other legal process whatsoever. I have examined very carefully to see if I could find out any vestiges for its introduction, but can find none. It is as ancient as any other part of the common law. There is no priority or posteriority to be found about it. It cannot, therefore, be said to invade the common law. It acts in alliance and friendly conjunction with every other provision which the wisdom of our ancestors has established for the general good of society.[1]

Sir T. Erskine May says: "The right to commit for contempt, though universally acknowledged to belong equally to both Houses, has often been regarded with jealousy when exercised by the Commons." And again: "The power of commitment by the Commons is established upon the ground and evidence of immemorial usage." And he adds that, since 1547, it has been exercised more than one thousand times.[2]

The entire American colonial history is filled with instances of the assertion by the colonial legislatures of the possession by them of all the rights of Parliament. Every history of that period shows that the colonial assemblies asserted their right to the full parliamentary power, that they never ceased that assertion, and that they did in fact exercise that power. Lord Cornbury, Governor of New York, says, in his report of 1704:

> You will perceive that the assembly here is going into the same methods that the assemblies of some other provinces upon this continent have fallen into, who think themselves entitled to all the powers and privileges that a House of Commons in England enjoys. How dangerous it may be to suffer them to enjoy and exercise such powers I need not tell your Lordships.[3]

There are also many instances in the colonial period of the exercise of this particular parliamentary power of investigation. Among these instances in New York was one in which the existence of the power was questioned, and in which the witnesses were punished for contempt. It is nearly analogous to some of the very recent cases in the same state, and is of interest as an early discussion of the power in question. It appears

[1] Lives of the Chief Justices, vol. iii. p. 190 *Am. edition.*

[2] Parliamentary Law and Practice, pp. 73, 74.

[3] Docs. relating to the History of New York, vol. 4, p. 1121.

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that in 1701, the Council, the upper house of the colonial legislature, examined two persons who had been accused of obtaining a contract worth £500 from a corrupt official for the sum of £72 and upon their refusal to testify concerning the transaction, the council committed them for contempt. This was made the subject of complaint to the Lords of Trade; and Lord Bellamont, then Governor of the colony, reported upon it as follows:

> Mr. Montague would make the commitment of Messrs. Burt and Wilson a great offense, calling it arbitrary and illegal, and is so disingenuous as to charge it on me singly as my act, though he knows very well it was done during the session of the Assembly, and that the Council and I did it in our legislative capacity; wherein we had the concurrence of the House of Representatives: and, if I may believe Col. Smith and Mr. Graham, who are our Chief Judge and Attorney-General, the Governor and Council have, during the session, in such cases a judicial power like that of the House of Lords in England, and can hear and determine civil causes (not appealable to the King), and imprison the parties offending. If the proceeding against Burt and Wilson was extra-judicial, why, then, have we not an able Judge and Attorney-General to set us right, and keep us to the strict rules of law? In this case we acted by the best advice we could have had, and it was done to discover a fraud put on the King in his revenue of Excise.[1]

Several cases have lately been decided by the British Privy Council which have been considered by our courts as limiting the inherent powers of a legislative assembly, and also as showing that the American colonies did not inherit or possess the powers of Parliament. One judge[2] in New York even says, these Privy Council cases distinctly hold that the legislatures of the colonies of England did not take the power of Parliament to punish for contempt. But this is clearly a mistake, for the thing was done.

Of these cases Beaumont *vs.* Barrett[3] arose in the colony of Jamaica; Kielley *vs.* Carson,[4] in the colony of Newfoundland;

[1] Docs. relating to the Colonial History of New York, vol. 4, 418, 821.
[2] Judge Westbrook in the McDonald Case, 32 Hun, 586.
[3] 1 Moore, P. C. Cases, 59.
[4] 4 Moore, P. C. Cases, 62.

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Fenton *vs.* Hampton,[1] in the colony of Van Diemen's Land; Doyle *vs.* Falconer,[2] in Dominica; and Dill *vs.* Murphy and Speaker *vs.* Glass,[3] in the colony of Victoria. Now it has been entirely overlooked in the discussion of these cases that in the colonies of Jamaica, Dominica, Van Diemen's Land, and Newfoundland there has never been any such claim, or any such exercise of the rights and privileges of the houses of Parliament as was made and exercised in the thirteen American colonies which became the American Union. Each of the colonies in question, moreover, was organized by royal proclamation, or by a specific act of Parliament, by which their sovereignty is limited. Their legislatures exercise only such powers as are expressly conferred upon them, and they have acquiesced in the English view of their jurisdiction and powers — which the thirteen American colonies certainly did not do. In a later case than any of these referred to, the Supreme Court of Canada admirably points out the difference between those colonies and the states of the American Union. The court says:

> The reasons that might be sound in regard to Congress and the state legislatures do not at all justify the adoption of the same power by the provincial legislatures. While under the constitution of the United States, the general and state legislatures are each, in its proper sphere, paramount, and have inherent constitutional rights and privileges, the provincial legislatures are now the creatures of an act of Parliament by which their functions are comparatively limited and confined to certain subjects, which, by other acts of Parliament, may be abridged or altered from time to time. I cannot discover how any provincial assembly could obtain any right to exercise judicial functions unless by legislation, for there are no laws and customs peculiar to each which would give the right by which an alleged contempt could be tried. Without receiving by legislation the same power as is exercised by the House of Commons, and without law or custom of Parliament of their own to warrant such a trial, how did they get it?[4]

[1] 11 Moore, P. C. Cases, 347.
[2] 1 L. R. P. C. Cases, 328.
[3] 1 Moore, P. C., N. S., 48, and 3 L. R. P. C. Cases, 560.
[4] Landers *vs.* Woodworth, 2 Duval, Can. Sup. Ct. 211.

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I do not think that it will appear from a careful reading of the cases referred to, that the Privy Council intended to enter upon an abstract discussion of the inherent powers of a legislative assembly or to say that those powers, whatever they are, ought to be limited. Indeed, in Doyle *vs.* Falcóner the court says: "But their Lordships, sitting as a court of justice, have to consider not what privileges the House of Assembly of Dominica ought to have, but what of law it has."

Whatever may be the inherent or necessary powers of a legislature abstractly considered, there can be no doubt whatever but that the legislatures of the states of the Union have derived from the sources and in the manner above indicated, and do now in fact possess, an inquisitorial power. There is no express constitutional provision for it except in the declaration of the Massachusetts constitution which I quote at the beginning of this article; but I venture to say, that it is as obvious that the power to inquire is a desirable and necessary adjunct of the power of making laws, as it is obvious that legislatures should have some knowledge of the matters concerning which they are to legislate. Knowledge of a subject, or the power to get knowledge of it, are indispensable prerequisites to intelligent legislation upon it. Accordingly such a power of inquiry has long been exercised by the legislatures of many states, not only directly but indirectly, by means of commissions and special investigating bodies; and this method of enlightening the legislature and the public, theoretically at least with a view to legislation, has been thoroughly wrought into the public policy of those states. The general statement of the possession and necessity of such an inquisitorial power has been admirably made by Mr. Cushing, although he evidently writes with the constitution of Massachusetts in mind, and his views would hardly be accepted without reservation in other states. The powers incidental to a legislative assembly, he says, like the rights and immunities which have been considered under the name of privileges, are such only as are necessary to enable it to perform its principal or legislative and administrative functions, and are of two kinds — inquisitorial and judicial.

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A legislative assembly [he continues] being authorized in the exercise of its constitutional functions, both administrative and legislative, to institute inquiries into all grievances of the citizen which are remediable by legislative enactment, and into all abuses of power by persons in office, with a view either to their removal by address, or to their punishment by impeachment, it has a power to investigate all such subjects by the examination of witnesses or otherwise, in the same manner as is practiced by grand juries, and as a consequence of this authority, the assembly itself, its officers and servants, and all persons connected with every such investigation, enjoy a perfect immunity for everything fairly said, done, or published in the course of such inquiry.[1]

The journals of legislative houses show that the exercise of this power has taken a very wide range, and the tendency is to make it wider. Legislatures are constantly called upon to legislate upon new and more intricate subjects, as, for instance, upon the laying of telegraph wires underground. The power to inquire into these subjects may be, and often is, not only desirable but absolutely essential in order to secure any exercise of the legislative power whatever. The statute books also show that the power has even been delegated to bodies created by the legislature for the purpose; such as boards of health, railway commissions, civil service commissions, and the canal investigating commission in New York.[2] In the last case the power to delegate the power of inquiry, and of the commission to which it was delegated to compel answers to its inquiries, was passed upon and affirmed by the courts.[3] These bodies, or some of them — notably the Civil Service Commission in New York — have been given very large powers of investigation; and in that state the court of last resort has given the nearest approach to a judicial expression to Mr. Cushing's views which has been given anywhere.

In a case involving the power to punish for contempt, it declared that the existence of that power in the legislature admitted of no doubt whatever, and then went on as follows:

[1] Cushing, Law and Practice of Legislative Assemblies, sec. 640.
[2] Laws of 1875, chap. 91.
[3] People *vs.* Learned, 5 Hun, 67.

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It is a necessary incident to the sovereign power of making laws, and its exercise is often indispensable to the great end of enlightened, judicious and wholesome legislation. The power is rather judicial in its nature, but in a legislative body exists as an auxiliary to the legislative power only. In the earlier history of the country from which our institutions both of law and legislation are principally derived, judicial and legislative functions existed in and were exercised by the same body. And when they were afterwards separated and each came to be exercised by a separate tribunal or body, the legislative body necessarily retained a sufficient amount of the judicial power to enable it to investigate fully and to comprehend thoroughly any and every subject upon which the body proposed to act in its legislative capacity. This included the power to subpœna witnesses to give evidence, to compel them to attend and testify, and to punish for disobedience and contempt in refusing to attend, or in refusing to testify upon attendance.[1]

The inquisitorial power thus forcibly stated is usually exercised through a committee of the branch of the legislature desiring or undertaking the particular inquiry; such, for instance, as the committees which are sitting, at the time of this writing, in Boston to investigate the sale by the Governor and Council of Massachusetts of certain railroad bonds, and in New York to investigate whether or not the power of granting street-railroad franchises should be taken away from the aldermen of the city of New York. The appointment and proceedings of the last-mentioned body afford, perhaps, a fair example of the method in which the inquisitorial power has usually been exercised, and of the necessity for some further regulation of the particular manner in which it should be exercised. I suppose no moral or reasonable man can any more doubt that it is unnecessary to have an investigation in order to ascertain whether or not the power of granting valuable franchises should be taken away from the New York aldermen than he can doubt that it is unnecessary to have an investigation to ascertain whether the shortest distance between two points should be measured on a straight line instead of on the curve of a parabola. Nevertheless, the Senate of New York appointed a committee for the ostensible purpose of making such an inquiry. The investiga-

[1] Wilckens *vs.* Willet, 1 Keyes, 525, 526.

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tion conducted by this committee is the first which followed an important decision of the Court of Appeals on the subject of investigations in the case of The People *ex rel.* McDonald *vs.* Keeler,[1] and the committee's proceedings should be examined in the light of the opinion of the court in that case, the facts of which were as follows: The Senate appointed a committee to investigate the Department of Public Works in the city of New York. In the course of its investigation, William McDonald, who had been called as a witness, declined, under the advice of counsel who had been permitted to attend with him before the committee, to answer certain questions addressed to him by the counsel of the committee. Thereupon the investigating committee, which had permitted the attendance of counsel with the witness as a matter of courtesy but not of right, directed the obstructing counsel to withdraw; which he did, taking, however, the witness with him. The chairman of the committee stated to the witness that his examination was not finished, and warned him not to leave the presence of the committee. After the witness McDonald had thus, despite the warning, withdrawn from the presence of the committee and declined to be further examined, that body reported the facts to the Senate; which thereupon directed the issue of its warrant for the arrest of McDonald, and directed that he should be brought before the bar of the House to answer why he should not be punished for a contempt. He answered by counsel, and was thereafter adjudged guilty of the contempt and sentenced to imprisonment in the Albany jail. A writ of *habeas corpus* was applied for in his behalf, and the case was carried to the Court of Appeals and decided in favor of the power of the Senate in the premises. The court held that the power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils was one which had been necessary, and had, in fact, been exercised by legislative bodies from time immemorial. It held, also, that the power of legislative bodies to punish directly for contempt in refusing to answer such inquiries had not been superseded by

[1] 99 N. Y. 463.

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the statutes (such as have been passed by Congress and in New York [1]) making such contempts also misdemeanors punishable by the courts. The court then said:

> Two other points are presented on this occasion. One is that the investigation on which the relator was sought to be examined was one which the House was not authorized to institute, and that the case, therefore, falls within the decision in Kilbourn *vs.* Thompson; and the other, that the questions which the relator refused to answer were not pertinent or proper. This second point we do not deem it necessary to discuss, because the contempt charged consisted not merely of the relator refusing to answer those questions, but of his refusing to be further examined, or to remain in attendance upon the committee.

Assuming the statute [2] under which the committee and Senate had proceeded to be valid and the investigation itself to be a proper legislative proceeding, the court concluded that, by refusing to be further examined and withdrawing from the presence of the committee without its consent, the witness brought himself within the terms of the statute defining, as an offence, "refusing to attend or be examined as a witness, either before the House or a committee to take testimony in legislative proceedings." McDonald's refusal to be further examined or to remain in attendance before the committee was placed upon the ground that it had refused to recognize his right to be accompanied by counsel and act under his advice in answering questions; but on this point the court said:

> We are of opinion that he had no constitutional or legal right to the aid of counsel on such examination. . . . The relator was not on trial, nor was he a party, but he was a mere witness called upon to testify in relation to charges against another person, and there was no trial pending against any one. As well might a witness examined before a grand jury, conducting the investigation of a charge against another person, with a view to his indictment, claim the right to be attended by counsel. We do not think that a mere witness has this right.

The court finally considered "the important and more doubtful question" whether the investigation was a legislative proceeding

[1] Sec. 69 N. Y. Penal Code, secs. 102, 104, U.S. Rev. Statutes.
[2] 1 N. Y. Rev. Stat., 154, sec. 13.

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which the House was authorized to institute. It held that it was such a proceeding: because, in the first place, the Department of Public Works of the city had been created by a state statute and was a proper subject of further legislative enactment; then because the committee appointed to investigate it had been directed to report the result of their investigations and their *recommendations concerning the same* to the Senate; and lastly because the court was bound to presume that the action of the legislative body was taken with a legitimate object.

It is to be noticed in this case, as in the Kilbourn case, that the court has not passed upon one of the points which it is popularly supposed to have decided, namely, the manner of examining the witnesses. A decision upon that point was rendered unnecessary by the contempt of McDonald in refusing to be examined at all. Whether witnesses should be examined by a legislative committee as in a court of justice, as in a grand jury room, as on the stage of a theatre, is apparently still a very open question. The only case, of which I am aware, in which it has been passed upon by a court is the Dalton case in Ohio which, though not yet reported, is said by the newspapers to have decided that while the General Assembly of Ohio can punish a recusant witness before it for contempt (although this was the first instance in which that power had been exercised), it cannot so punish in any case in which the legislature has no jurisdiction to inquire into the subject-matter to which the questions propounded to the witnesses were directed; nor where it is sought to compel a witness to answer questions which he would not be compelled to answer in a court of law. In considering the jurisdiction of the Senate in the McDonald case, however, the court used language which is suggestive as to manner of exercising the inquisitorial power; and indicated the limits which would probably be put upon it if a case should be presented requiring a determination of the points which it did not consider in the McDonald case. The court said:

> An investigation instituted for the mere sake of investigation, or for political purposes, not connected with intended legislation or with any

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of the other matters upon which the House could act, but merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, where the legislature had no power to put him or it on trial for the supposed offences, and no legislation was contemplated, but the proceeding must necessarily end with the investigation, would not, in our judgment, be a legislative proceeding or give to either House jurisdiction to compel the attendance of witnesses or punish them for refusing to attend.

If the resolution had shown upon its face that the only purpose of the investigation was to satisfy the tax-payers of the state as to the truth of the charges, or to relieve the department from reproach, and no further action was contemplated or could be had in the matter by the legislature, the case would fall within the decision of Kilbourn *vs.* Thompson.

Now the New York committee, above alluded to, which is investigating the aldermanic sales of franchises, presented a preliminary report to the Senate on March 9, in which they say:

> The investigation of your committee is not complete. It remains to inquire more at large into the criminality or culpability of the individuals composing the Board of Aldermen. . . . Let it be also understood that your committee intend by no means to relax for a moment the further prosecution of their inquiries to unearth the bribery of the aldermen, and to bring to the light of day all guilty parties whose criminal acts are within the authority and scope of this investigation. Without going into details as to the progress already made in this direction, or disclosing information which has not yet been made public, and which it would be manifestly improper to divulge, your committee confidently believe that the roots of this whole conspiracy will be laid bare before this investigation is ended, and that this carnival of official wrong and robbery will, at least in some degree, be arrested.

"A carnival of official wrong and robbery" ought by all means to be arrested, and an inquiry into the criminality or culpability of individuals composing the Board of Aldermen is a very desirable thing; but it is a very grave question whether it is a proper legislative function to undertake either of these tasks. Certainly neither of them has ever before been avowed by any legislative body, as among the objects for which it had undertaken an investigation. And suppose the committee should demonstrate that all the individuals in the Board of

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Aldermen were guilty of criminal acts, and suppose it should succeed in laying "bare the roots of the conspiracy," or arresting the "carnival," what could the legislature, as a legislature, do about it? It could not punish the criminals. Could it do anything except lay the facts before the grand jury of the county? If the legislature were the grand jury of the State of New York, then this committee might properly undertake the task which it sets for itself in this preliminary report; but it is not. The doctrine laid down by Mr. Cushing in the paragraph quoted on page 95 is not sustained, as to New York, by the decision in the McDonald case; and the course of inquiry outlined by this committee is not only not in accordance with the views of the Court of Appeals above quoted, but appears to be distinctly opposed to them. Some of the other proceedings of this New York committee, if they have been correctly reported in the newspapers, are free from the doubts which may be entertained about those already referred to, and are so entirely illegal and improper, that I only allude to them as instances of the possible misuse of the inquisitorial power which makes its regulation desirable. The committee are reported, for instance, to have compelled one witness to explain his letters to his former fiancée; and another, Kerr, to produce all his private books of account, and to submit the whole of them to the examination of the committee, without any reference to whether or not they had any bearing upon the subjects concerning which the witness was testifying or the committee investigating. If this was in fact done, the committee were guilty of an offence in permitting it, which makes them maskers in the "carnival" of official wrong. So also the committee are reported to have taken testimony, the effect of which was to show that one of the aldermen was a "fence" for thieves; but that testimony had no more bearing upon the subject-matter into which the committee was inquiring than the testimony of a physician would have had, to the effect that the facial angles of aldermen were usually small and their faces usually red. If a legislative committee, under a pretext, however flimsy, of obtaining necessary information for the legislature, can publish that one man is

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probably a thief, or that at some previous time, and in some matter in no possible way before the committee, he acted as the receiver of stolen goods, they can do the same thing of another man, and of any man they please. In the particular cases under consideration, there is little reason to doubt that the individuals, who suffered through the course of inquiry adopted, are beyond the pale; but that is no justification for the misuse of the power of making the inquiry; and in almost any other case it would be recognized that the course of the committee was as much of a scandal upon the forms of justice as the facts brought out by the committee were themselves scandalous.

Other instances might be given of the abuse of the inquisitorial power by other committees in the same State of New York; but they occurred before the questions arising in connection with the use of this power had been passed upon by the court of last resort, and are therefore less important. I have considered principally, the case of New York, because it is there that the inquisitorial power has been most used and most carefully construed. Enough, I think, has been said to show that the power even there is open to great abuse, and probably also that in a state where partisanship is so bitter, and corruption so frequent and gigantic as in New York, too large a measure of discretion has been left to the legislature. The remedy is the enactment of a statute defining and regulating, so far as possible, all the questions which arise in connection with the exercise of the inquisitorial power; affirming, if need be, the necessity and existence of the power, but providing among other things: (1) That neither house of the legislature shall investigate the administrative conduct of an office, the head of which it has no power to remove; (2) That there shall be no punishment for contempt except in case of refusal to be examined, or to answer a question which might have been asked in a court of law.

FREDERICK W. WHITRIDGE.

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THE CONFERENCE AT BERLIN ON THE WEST-AFRICAN QUESTION.

THE Conference at Berlin on the West-African question is an event unique in the history of political science. To judge from outward show it was a diplomatic conference: the system adopted and the language used for its convocation; the constant reference during the various stages of its progress to international law, to the principles and to the aspirations of that science; the strict diplomatic form of procedure followed during the debates; and, above all, the ostensible subject of discussion, would all seem to point to this conclusion. And yet history records not another instance of an assembly at which were represented so many powers, gathered together, as it was supposed, for international purposes, that partook in so small a degree of the essential parts of an international conference, or that was so barren in results of importance to the science of international jurisprudence. Hitherto it has been some international question, that is, some question arising from and involving the collective interests of a number of states that, in each instance, first suggested the thought of an international conference; and the need of a settlement of questions of such nature has hitherto been the urgent cause for diplomatic gatherings. Such, notably, was the case with the Congresses of Vienna, of Aix-la-Chapelle, of Verona, and with the Congress of Berlin of 1878. With the recent Berlin Conference, however, it was wholly different. Diplomatic in form, it was economic in fact; ostensibly international in its bearings, in truth it concerned but one nation; and it was designed to help to solve, for that nation only, a strictly social problem.

I. *History of the Question.*

Africa, especially its west coast, has been pre-eminently the ground of Portuguese exploration. In that region were the

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earliest Portuguese discoveries made; and it was a Portuguese naval officer, in command of a Portuguese expedition, who, following the tracks of previous Portuguese navigators, first sighted the broad mouth of the Congo as early as 1484. With the accustomed formalities of the times, possession was taken of the locality in the name of the crown of Portugal; the river was given the name of Zaïre; and Portugal speedily perfected her inchoate rights of ownership, arising from original discovery, by actual occupation and by the establishment of a number of settlements along the coast, north and south of the estuary.

Whether it was that the papal partition of the southern section of the globe fully satisfied Spain as to the right of Portugal to Africa; or whether Spain, the only nation then capable of contending with Portugal for maritime supremacy, had no leisure to turn to Africa or no taste for acquisitions on that continent, certain it is that the rights of ownership and sovereignty which Portugal claimed at an early period over West Africa were never disputed by her neighbor and rival; and by the time that other states came to strive for the mastery of the seas and for colonial grandeur, these rights of ownership and sovereignty had grown so fixed that, in time of peace, they were respected by one and all, and regarded as traditional.

The clash of interests that existed between Portugal and Spain at an early period in their history had driven the former to ally herself with the enemies of the latter, especially with England and later with the Netherlands. As Spain was in an almost chronic state of war with these powers, Portugal found herself, in consequence, involved in continual hostilities either with Spain herself or with France, Spain's traditional ally, and sometimes with both. A descent upon each other's colonial possessions by the maritime belligerents was at that time a favorite piece of tactics; the colonies suffered most severely during European wars, and not infrequently passed, during a war, in rapid succession from the hands of one belligerent into those of another. The colonies of Portugal, whether in Africa or America, were not exempt from this fate. Owing perhaps to the proverbial lack of bravery of the Portuguese, the Spanish

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or the French flag would, as a rule, be seen, soon after the breaking out of a war, floating over a large number of places where the Portuguese flag had waved before the war. But with equal regularity, due perhaps to the proverbial tact of the cabinet of Lisbon, most of the territories Portugal had lost, and generally all of them, were as surely restored after the cessation of hostilities, and by the treaty of peace were reaffirmed to be Portuguese domain. The treaties of 1668,[1] 1715,[2] and 1761[3] between Portugal and Spain, and the treaty of 1713[4] between Portugal and France are, therefore, so many early title-deeds of Portuguese possessions in both hemispheres. Taking it for granted, as it would seem, that Portugal had been dispossessed of all her colonies during the preceding hostilities, it was declared by a sweeping clause in each of the treaties cited that all those possessions should be restored to their former owner. But those colonies only were mentioned by name which were retained by the conqueror, or transferred to him by way of exchange or for other considerations; and the name of the territory of Angola, as the western littoral of Africa then began to be called, does not appear in any of these treaties.

After the great European war that closed in 1763, into which Portugal had been drawn as a matter of course, the colonial possessions of all the belligerents again formed an important part of the negotiations for peace. During this war, as during all former ones, Portugal had been stripped of many valuable possessions, her possessions in Angola among others. These were now to be re-acquired, and her plenipotentiaries acquitted themselves of their task with their wonted ability. By article ii. of the treaty of Feb. 10, 1763, all the treaties cited above were reaffirmed; and by article xxi. it was especially stipulated, in respect to Africa, that the French and Spanish troops

[1] Du Mont, VII. P. I. 70; La Clede, VIII. 518; Castro, I. 357; Schoell, I. 321.

[2] Du Mont, VIII. P. I. 444; Cantillo, 164; Calvo, II. 167; Castro, II. 262; Schoell, II. 149.

[3] Cantillo, 467; Calvo, II. 348; Castro, III. 126; Koch, II. 162; Schoell, III. 225.

[4] Du Mont, VIII. P. I. 353; Castro, II. 243; Calvo, II. 109; Schoell, II. 109; British and Foreign State papers, IV. 818.

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were to evacuate all the territories which they might have occupied on that continent; those territories to be restored to Portugal and placed under the guaranty of the treaties which, by article ii., were declared to be the bases of the present treaty.[1]

I have not been able to discover any public documents that throw any light on Angola from the date of this last treaty until 1784, when important disclosures were made. In that year the Portuguese government, in the exercise of what it considered its sovereign rights in Western Africa, ordered the erection of a fort at Cabinda, north of the Congo. But the fort had hardly been finished when it was attacked by M. de Marigny, in command of a French frigate, on the ground that the fort was calculated to interfere with the freedom of traffic of French subjects on that coast. The fort of Cabinda was not destined to be an exception to established rules in the military annals of Portugal. Its commander declared it to be impossible to keep the place; he signed a capitulation[2] with M. de Marigny by which, reserving all the rights of Portugal, the settlement of the question was referred to the home governments; and in the meanwhile he suffered the fort to be demolished by the French commander.

The discussion on the subject of freedom of commerce on the coast of Angola, thus raised by M. de Marigny in Africa, and transferred to Europe by the timidity of the Portuguese Commander at Cabinda, gave rise to a protracted discussion between the cabinets of Lisbon and Versailles. The Portuguese court claimed right of sovereignty at Cabinda, and all accessory rights; and in aggrieved tones it demanded reparation for the insult done to the honor of its flag. The French court, on the other hand, without entering on the question of Portuguese rights of sovereignty, refused all reparation; and it stood firm on the right of its subjects to the freedom of commerce with the whole of West Africa, claiming that that right had been acquired by them

[1] Castro, III. 100; Schoell, III. 106; Martens, R. I. 127; Calvo, II. 359; Cantillo, 486; Ghillany, I. 170.

[2] Martens, R. IV. 466; Castro, III. 348.

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by long and uninterrupted exercise. There was not at the time any prospect of a peace negotiation, where Portugal might have hoped to retrieve her loss. France remained unyielding. At this juncture Spain tendered her good offices to bring about a compromise. The offer was finally accepted; and on Jan. 30, 1786, the plenipotentiaries of Portugal and France met at the Pardo, in Spain, and signed a convention in the nature of a series of declarations setting forth the claims of their respective states and amicably adjusting their differences.

On behalf of Portugal, it was declared that the construction of a fort on the coast of Cabinda was not intended to disturb, to weaken or to impair the right claimed by the subjects of H. M. C. M., the king of France, to the freedom of commerce and traffic on that coast in the way they had hitherto enjoyed it; that accordingly H. M. F. M., the king of Portugal, had issued precise instructions to the authorities on land and to the naval officers, as well as to his own subjects, not to offer, directly or indirectly, the slightest hindrance to the said commerce; and he pledged himself, furthermore, to indemnify the subjects of France for all damages which they might sustain by reason of the violation of his orders.

On behalf of France, it was declared that the expedition of M. de Marigny had not been ordered with the intention of disturbing, weakening or impairing the right of sovereignty which the crown of Portugal claimed over the coast of Cabinda as part of the kingdom of Angola; that accordingly H. M. C. M. would issue orders to the neighboring governors and to the naval officers, as well as to his own subjects, not to offer, directly or indirectly, any obstacle or difficulty, either with the natives or otherwise, to the said sovereignty or to the exercise thereof; and he pledged himself, furthermore, to indemnify the crown of Portugal for all damages which it might sustain by reason of the violation of his orders as well as by reason of the demolition of the fort at Cabinda.

Finally, lest the question of indemnity should lead to subsequent disagreements, it was declared on behalf of France and of Portugal, that the existing claims of each against the other

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— as well the claims which French subjects might at that time have against Portugal for interference with their commerce, as those of Portugal against France for the demolition of the fort at Cabinda — should be remitted and cancelled.[1]

The recognition by France of Portuguese sovereignty over the coast of Cabinda, and the indirect recognition of that sovereignty over the rest of Angola, did not, however, quite fill the measure of the wishes of the cabinet of Lisbon; and it was found necessary to subjoin a protocol to the above convention and declarations. In this protocol the plenipotentiary of Portugal set forth that, it being the desire and the object of his master to define the limits of French commerce on the whole coast of Angola, he therefore proposed, with the view of avoiding fresh disputes in the future, that it be agreed that the said commerce should never extend to the southward beyond the Zaïre and Cape Padron. The plenipotentiary of France observed that the commerce of the French in those regions should not be limited more than was that of the English and the Hollanders, who extended theirs as far south as the rivers Ambriz and Mossula. Thereupon the plenipotentiary of Portugal declared, that, to the south of the Zaïre, the possessions of Portugal extended as far south as the southernmost extremity of Benguela, stretching from the coast inland to the Congo and Casange; that there were situated on that territory several parishes and military outposts, and several villages and hamlets the sovereignty of which belonged exclusively to the crown of Portugal. That for this reason Portugal could not consent to recognize in any other nation a right to traffic on said coast, unless it be on that portion which lay north of Zaïre; to the south of that river and of Cape Padron only Portuguese subjects were allowed to trade; and Portugal looked upon all other commerce or navigation, which the subjects of any nation whatever might have tried to establish in those regions, as furtive, clandestine and illicit, such traffic and navigation never having been authorized by Portugal, and that country never having lent its assent to such traffic. And, finally, that Portugal never

[1] Martens, R. 2, IV. 101; Castro, III. 410; Koch, II. 490.

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would authorize or lend her assent thereto, but on the contrary would hinder and resist it.

The plenipotentiary of France announced himself authorized to reply to the representations made on behalf of Portugal, and to declare, in the name of his master, that the principles of justice and moderation which governed all his actions did not allow him to arrogate to himself the right either of contesting or of affirming the rights claimed by the crown of Portugal to the ownership, the sovereignty and the commerce of the coast of Angola from Cape Padron to the south; but that H. M. C. M. agreed that the commerce of his subjects should not extend further south than Cape Padron, provided always the subjects of France were treated in that respect the same as the subjects of any other state.[1]

Thus with admirable skill did the cabinet of Lisbon extricate itself from a serious difficulty, with a minimum of loss to Portuguese interests and with the acquisition of substantial advantages. Portugal sacrificed her exclusive colonial policy north of the mouth of the Congo, where, it would seem, she never had been able to enforce it strictly. But in return she succeeded in establishing it the more firmly over the larger and more important tract of land, besides obtaining from so powerful a state as France the full recognition, as against France herself, of Portuguese ownership and sovereignty over the whole territory of Angola.

Whether royal, republican or imperial, France was destined to remain yet for some time an object of terror to Portugal. At the beginning of this century the court of that kingdom fled across the seas, to its dominions in Brazil, and its capital was occupied by the soldiers of France. The intimacy that had always existed between Portugal and Great Britain was naturally strengthened by these events. Five successive treaties of alliance were signed between these two states between the years 1807 and 1810. Among these, the treaty of Feb. 19, 1810, signed at Rio Janeiro, deserves special study in connection with the subject in hand. This treaty had two objects

[1] Martens, R. 2, IV. 103.

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in view: first, to renew and render more solemn the alliance between the two states, both of which pledged themselves to unremitting efforts against France, while Great Britain assumed the further obligation never to recognize any but a prince of the house of Braganza as king of Portugal (articles i.–viii.); and, second, to provide for the gradual suppression of the slave-trade. It would seem the hard conditions of the times should have restrained Great Britain from exacting any sacrifices from the court of Rio Janeiro in return for the powerful aid which she was then giving that court. To oblige Portugal to suppress the slave-trade, was to inflict upon it a hard blow. Portugal had always driven a lucrative trade in negroes; and the importance of that trade was, just at that time, growing in proportion as the resources of Brazil and Cuba were being developed. The clause for the abolition of the slave-trade was insisted upon by Great Britain; the court of Rio Janeiro had no choice but to yield; and, by article x., H. R. H., the prince regent of Portugal, promised to coöperate with H. B. M. in adopting the most efficient measures gradually to suppress the slave-trade throughout his dominions; and not to allow his subjects, in the future, to trade in negroes on any part of the coast of Africa which did not belong to Portugal. The court of Rio Janeiro was, however, keenly alive to the dangers to which Portuguese sovereignty in Africa might be exposed by this concession; and, with far-sighted forecast, it took the precaution to provide against the danger by stipulating expressly, in the same article x., that nothing contained therein should be so construed as to render null or in any way to affect the rights of the crown of Portugal over the territories of Cabinda and Mollembo, H. R. H., the prince regent of Portugal, being determined not to abandon or to renounce his just claims to the said territories.[1]

As one of the objects of this treaty was to guarantee the crown of Portugal to the house of Braganza against French usurpation, few things could be more significant than the clause

[1] Martens, N. R. I. 245; Castro, IV. 396; Calvo, V. 207; B. and F. State Papers, I. 547.

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regarding Portuguese sovereignty in Africa, a sovereignty which, in a manner, had been recently disputed by France. There is no evidence in this treaty or in the negotiations which preceded it, that England contested at the time or had ever contested the sovereignty of Portugal over Angola. This treaty supplied Portugal with a new title-deed to the coast of Cabinda and Mollembo; and it throws important light upon the actual political status of that coast down to the year 1810.

During the years immediately following the restoration of the exiled dynasty, the signing of treaties between Portugal and Great Britain continued to be a no less frequent occurrence than it had been since 1807. There was not, at this later period, any question of alliance; the *do ut des* principle could no longer be invoked; but the abolition policy to which the Portuguese government was driven in the days of its distress remained a fruitful source of discussion between the two states, and soon grew to be a vexed question. The treaty of 1810 had not been faithfully observed by Portugal. Great Britain was not disposed to relent. New promises were forced from Portugal, and a series of treaties, each more stringent than the other, was again concluded between them. Among these treaties, those of January 22, 1815,[1] and July 28, 1817,[2] are again important as defining anew the extent of Portuguese dominion in West Africa. Article i. of the former and article ii. of the latter enumerate the territories in which the traffic in slaves should continue to be permitted under certain restrictions to Portuguese subjects, only on the ground that those territories were owned by Portugal. They were, upon the west coast, all the territory extending from the eighth to the eighteenth degree of south latitude; and "those territories to the south of the equator, over which H. M. F. M. declares that he retains his rights, namely, the territories of Mollembo and Cabinda, from the fifth degree to the eighth degree south latitude." In other words, these treaties recognized the

[1] Martens, N. R. II. 96; N. S. II. 253; Hertslet, II. 72; Castro, V. 18; Calvo, V. 328; B. and F. State Papers, II. 348; XI. 587, 688.

[2] Martens, N. R. IV. 438; N. S. II. 278; Hertslet, II. 80; Castro, V. 324; Calvo, VI. 70; B. and F. State Papers, IV. 85; XI. 689.

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sovereignty of Portugal over the whole western littoral of Africa, from the fifth to the eighteenth degree south latitude.

Although by these treaties the British cruisers were clothed with extraordinary powers of visitation and search, the trade does not seem to have been materially affected. Great Britain continued to complain;[1] she demanded and obtained from Portugal a decree fixing a date after which the trade should be absolutely interdicted;[2] she then obtained from the same state a decree declaring the traffic in negroes to be a crime, and punishable by law;[3] and, finally, seeing that notwithstanding all these precautions the slave-trade continued uninterrupted, especially in the ports of Cabinda and Ambriz, she questioned Portugal's right of sovereignty over the coast of Angola, alleging that those territories were evidently not occupied in a manner that was sufficiently effective and permanent. If the object of the cabinet of London, in resorting to such an extreme measure, was, as it is claimed, wholly disinterested, and if it was only intended to intimidate Portugal, it was highly successful. Portugal promptly agreed to the treaty of 1842,[4] by which the trade was to be immediately suppressed; and the Portuguese officials at Cabinda and Ambriz, and all along the coast, were seized with unwonted zeal for the execution of their diplomatic engagements. The cabinet of London, it would seem, wished to stimulate this zeal; and, pursuing the new policy that had been inaugurated in 1842, it proposed to Portugal, in 1846, to recognize the sovereignty and ownership of the latter over Angola, provided that after a certain number of years, to be subsequently agreed upon, the Portuguese should make it appear to the satisfaction of the British government that the slave-trade was wholly suppressed in West Africa. The Portuguese minister at London considered it humiliating to his country to subject her rights of sovereignty to a contingency, and the proposition was rejected. But the question with Great Britain was becoming delicate. After hinting the doubts of

[1] B. and F. State Papers, VIII. 116. [2] *Ibid.*, XXIV. 782. [3] *Ibid.*, VIII. 18.
[4] B. and F. State Papers, XXX. 448; Castro, VI. 374; Hertslet, VI. 625; Martens, N. R. G. III. 244.

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1842, and making the significant offer of 1846, the cabinet of London proceeded to a third stroke of policy: it protested against the military occupation by Portugal of any point on the coast of Angola; and it threatened to resist force with force.[1]

None of these moves were lost on the Portuguese government. It is true, they garrisoned the port of Ambriz in disregard of the threat of Great Britain; but at the same time they did not remit their efforts until the traffic in negroes was actually suppressed in that region, and until, on July 18, 1871, a treaty could finally be concluded with Great Britain declaring that the slave-trade no longer existed, and providing for the abolition of the slave-trade commissions and the recall of the extraordinary powers of visitation and search which had been conferred upon the cruisers on the coast of Angola.[2]

The prestige of Portugal in West Africa could not but suffer during the long period between 1810 and 1871. The presence of the slave-trade commissions and the watchfulness of the British cruisers tended inevitably to produce this result. But by the time the treaty of 1871 was signed, the authority itself of Portugal was greatly impaired on the coast of Angola. During this disturbed period, a number of factories, Dutch and French, had been suffered to go up; and the utterances of Great Britain since 1842 deprived the Portuguese government, as it would seem, of moral force to insist upon its exclusive prerogatives on the coast. But Great Britain was the only power that had ever pointedly questioned the rights of Portugal in Angola; and, moreover, in former days that same power had more than once acknowledged those very rights. The government of Portugal had regarded Great Britain's change of attitude as the outgrowth of an excessive zeal for abolition, and not as arising from any views founded in history or the law of nations; and it had acted upon this opinion. Nevertheless, when the presumable causes for the policy of Great Britain regarding Portugal's possessions in West Africa had at last

[1] B. and F. State Papers, XXVII.–XXXVII.: Correspondence between Great Britain and Portugal on the Slave Trade.

[2] Martens, N. R. XX. 511; B. and F. State Papers, LXI. 22.

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ceased to exist, the cabinet of Lisbon opened negotiations with that of London to remove the cloud upon Portugal's title in that region. Nearly as the question concerned the honor of Portugal, it was of no immediate importance at the time when the first diplomatic notes were exchanged on the subject; and the matter was not pushed with vigor until the end of 1882. In 1882 the French explorations under M. Savorgnan de Brazza began to attract attention in Europe; the French press dilated upon their importance, and advocated their being pushed to the south. But M. de Brazza could not carry his explorations much further south, without entering upon domain which Portugal claimed as her own. Moreover, the explorations under the leadership of M. de Brazza were not the only ones that began to alarm Portugal at this time. A geographical society which had been founded in Brussels, with King Leopold of Belgium as its president, and which subsequently gave itself the name and style of *The African International Association*, and later that of *The International Association of the Congo*, had lately been taking definite shape and assuming alarming proportions. It had endeavored, though without success, to retain the hero of the Taï-Ping rebellion to fight its battles on territories it claimed to have occupied in Central Africa; and it succeeded in enlisting Mr. H. M. Stanley to forward its plans by his exertions and the popularity of his name. Owing to the aggressive language which some of the members of the association began to hold in 1882, or perhaps because of the relationship existing between the reigning dynasties of Portugal and Belgium, the Portuguese government inclined to look upon the enterprise of the association as peculiarly menacing to the interests of Portugal on the Congo, and deemed it prudent to check its career betimes. These were the circumstances which, in the fall of 1882, caused the government of Portugal to feel that the time had come to take active measures looking to the final settlement of the status of the Congo. The negotiations with Great Britain, which had flagged since 1876, were, as a matter of course, first revived; and the Portuguese minister in London was instructed earnestly to solicit from Lord Granville

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a solution of the difficulties. He was to expose the situation on the Congo; without in any way alluding to the International Association of the Congo, he was to explain that it was not that Portugal feared encroachment on the part of France, but that the uncertainty regarding titles in West Africa, which had been created by Great Britain in 1842, endangered the situation; and that it was unwise to prolong such a state of affairs, lest actual occupation by a third power should complicate the matter and put the rights of Portugal in jeopardy.[1]

It was, however, not enough to treat with Great Britain only. The explorations of M. de Brazza could not be ignored; the factories of the Dutch on the Congo could not be argued out of existence; and the ear could not be shut to the pretensions of the International Association of the Congo, loudly urged as they were by many of its enthusiastic members. It was felt at Lisbon to be prudent to conciliate these interests, in order to secure to Portugal the unmolested enjoyment of her rights. Consequently, at the same time that negotiations were conducted in London, the Portuguese ministers at Paris, Brussels and the Hague received instructions to sound the governments to which they were respectively accredited, in order to ascertain their views, and to secure their concurrence to the treaty which it was confidently expected the Portuguese minister at London would succeed in obtaining from Great Britain.

The reports of the Portuguese minister in Paris to his government were highly satisfactory. He believed he saw evidence that M. de Brazza and Mr. Stanley were not acting in concert, as had been apprehended in Portugal; the alleged treaties between Mr. Stanley and African chiefs were ridiculed by the members of the French cabinet, seeing that those treaties were concluded, on one side at the least, by a private individual and not by a constituted state. He found the government of France moved by the kindest feelings towards Portugal. He was set at ease on the score of the French press, and was assured France did not intend to extend her dominions on the Upper Congo without previous understanding with Portugal. France, he was

[1] Mémorial Diplomatique, 1884, p. 234.

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told, looked upon the affair of the Congo in the light of a question that was strictly scientific; nevertheless, questions might arise which would fall within the province of the French government, and France would at all times act in accord with Portugal, whose good will, as one of the greatest African powers, it was in the interest of France to cultivate.[1]

The reports of the Portuguese minister from the Hague and from Brussels were less satisfactory. At the Hague he could make no impression with any argument based on the declarations of France and Portugal of 1786. The New Dutch Mercantile Association of Africa, having its headquarters at Rotterdam, was loudly calling upon its government to take active steps to prevent both France and Portugal from carrying out their designs of annexation in Central Africa, lest the Dutch government be later confronted with an accomplished fact; and the government listened with a willing ear.[2] At Brussels no word of comfort could be drawn for Portugal, either from the minister for foreign affairs himself or from Baron de Lambermont, who, besides being general secretary for foreign affairs, was also secretary of the International Association of the Congo, and was soon to represent Belgium at the Berlin conference.[3]

In Great Britain, also, Portugal met with greater difficulties than had been anticipated. The justice of Portugal's claims was promptly admitted, and Lord Granville signified his readiness to conclude a treaty recognizing Portugal's sovereignty on both banks of the Congo; but he stipulated also that the treaty be drawn upon the further bases of establishment of freedom of navigation on the Zambezi river and all its tributaries, abolition of all monopolies on those watercourses, establishment of a liberal tariff with a low maximum in all Portugal's possessions in Africa, and, lastly, cession to Great Britain of all the claims of Portugal, of whatever nature, to all the territories situated on the west coast of Africa between the fifth degree east and the fifth degree west longitude. Distasteful as were to Portugal the

[1] Archives Diplomatiques, 2de Serie. XII. pp. 284–321; Mémorial Diplomatique 1884, pp. 681, 697, 727, 262.

[2] Mémorial Diplomatique, 1884, 329.

[3] Mémorial Diplomatique, 1884, 280.

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conditions demanded for the recognition of her rights by Great Britain, she submitted readily to all except the last one. She objected, in the first place, that it was difficult to establish any boundaries in Central Africa with mathematical precision, as those boundaries depended in a great measure upon the oscillations of the colonizing movement; and in the second place, that she could not, without abdicating her dignity, renounce the right she had in common with all other powers of establishing colonies in the interior of Africa. Such a course would place her in a position inferior to that of other European states, whose rights to extend their possessions and to acquire new ones had never been denied or curtailed.[1] The point was discussed with much pertinacity on both sides for a twelvemonth, until finally a settlement was reached on Feb. 26, 1884. On that day the treaty was signed which, known generally as the Anglo-Portuguese treaty,[2] has attained a certain celebrity.

In order to settle the disputes about sovereignty at the mouth of the Congo, to provide for the complete extinction of the slave trade and to promote civilization and commerce in Africa — so runs the preamble of this treaty — it was stipulated that Great Britain recognized the sovereignty of Portugal over the western coast of Africa, between the fifth degree, twelfth minute, and the eighth degree south latitude, and inland on the Congo as far as Nokki (article i.). That the navigation of the Congo and the Zambezi rivers, with their affluents, was to be open to all flags alike, and that all nationalities were to enjoy in those regions the same liberties as the Portuguese; that a mixed commission of the two states should have power to establish police regulations and to impose such taxes on navigation as might be needed to defray the costs of maintaining light houses and other necessary works; that no monopolies should prevail in the navigation and commerce which were thus opened; that said navigation and commerce were not to be encumbered with any internal imposts; and that the tariff of Mozambique should be adopted as a maximum for the space of ten years (articles

[1] Mémorial Diplomatique, 1884, 234.

[2] Mémorial Diplomatique, 1884, 216; Archives Diplomatiques, 2de Serie. XII. 299.

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ii.–xi.). Lastly, that St. Juan Baptista d'Ajuda should, in a certain contingency, be ceded to Great Britain by Portugal (article xiv.).

The cabinet of Lisbon had won its point of honor; and it won more than its point of honor, but not without making important concessions. Besides the contingent relinquishment of St. Juan, Portugal's exclusive colonial policy on the Congo was a thing of the past. But in return her sovereignty was recognized over both banks of that water-course, and it was acknowledged to extend up to Nokki, where the river ceases to be navigable. This was the real point of importance. Having won this point, the Portuguese diplomat felt himself intrenched on unassailable ground. The most liberal, the most advanced utterances of the law of nations had not yet claimed that a river, both banks of which were owned by the same power up to the highest point where such river was navigable, could be treated as the common property of the world, and used as a common highway for the commerce and navigation of all flags. Armed with the treaty of February, 1884, the Portuguese cabinet cared little in what direction M. de Brazza pushed his explorations; and it felt itself protected against the International Association of the Congo. It believed firmly it had outwitted the hidden foes of Portugal, and demolished at least one lofty aspiration. It now hoped to enjoy the fruits of arduous labor.

The cry raised against the Anglo-Portuguese treaty immediately after it became known was loud; but it sounded like the cry of impotent rage. The opposition seemed utterly disorganized. Outside of Great Britain the treaty was assailed on the ground that it conceded too much to Great Britain; in Great Britain it was assailed on the ground that it conceded too little. The International Association which had claimed the territory north of the mouth of the Congo was landlocked. The blow dealt to it demoralized the action of its associates, the manufacturing towns of Great Britain, and the commercial centers of the Netherlands, before all of whom Mr. Stanley had spread the prospects of fabulous gains to be derived from the absolute

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freedom of commerce and navigation on the Congo. The association itself seemed seized with a panic. It had relied upon the sympathy of the continental powers with its project and upon what it considered the irreconcilable conflict of Portuguese and British interests, to prevent the conclusion of a treaty between these two states. Now that the treaty was a fact, the association thought only of saving its disbursements; it was anxious to liquidate; and, perceiving no other way to escape the consequences of the treaty of February, it hastened, on April 23, to sign with France an agreement, which, on its face was suspiciously unilateral. Absolutely silent as to the *quid pro quo*, the agreement bound the International Association of the Congo not to cede any point explored by itself to any power, under the reserve of special conventions which it might later conclude with France; and it pledged the association to give to France the right of preference, if through any unforeseen circumstances it should be led to dispose of its possessions.[1]

The discussion concerning the Congo had reached this point when a new figure stepped upon the stage; a figure of such magnitude, such power, and such controlling influence that it immediately became the central figure of all. The matter was forthwith taken from the hands of the British and Portuguese statesmen; the seat of the discussion was transferred to the capital of the German Empire; and in the hands of the German Chancellor the essence of the question underwent a radical change.

II. *The Intervention of Germany.*

Few subjects in modern times have given rise to more astonishment and more comment than the recent aggressive attitude of Germany upon the seas. Few subjects have supplied material for so many articles in journals and magazines. The old saying that Great Britain only has both colonies and colonists, while France has colonies but no colonists, and Germany colonists but no colonies; has been quoted as a text upon which all manner of prophesies have been risked. The maxim, it is said,

[1] Archives Diplomatiques, 2de Serie. XII. pp. 326, 331.

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is about to receive an important qualification; and the reading public has been promised the novel sight of portentous German colonies dotting the globe in all directions. A large emigration of Germans to any of the regions and latitudes that are yet open to colonization, in the strict sense of the term, is however an ethnic absurdity. But whether the establishment of such colonies is or is not absurd, the whole line of conduct of Prince Bismarck, and the unswerving course of his policy, both foreign and domestic, as avowed by himself on the most solemn occasions, is designed to check the present wholesale abandonment of the fatherland. No measure that would tend to spur emigration can find a place in Bismarck's plans.

The statesmen of Germany and of France are to-day confronted by the same social problem: the problem of increasing the population of their respective countries. But while the problem is the same in France as it is in Germany, it presents itself in each of these countries under a different aspect. In France the population remains stationary because of the paucity of births; in Germany it increases indeed, but not in the measure of the country's necessities, because of the hugeness of emigration. In consequence, the expedients adopted to arrest the evil are different in each country. While in France these expedients savor of the enactments under Augustus to encourage marriage and the begetting of children, in Germany the scheme devised by Prince Bismarck to keep the Germans at home is to furnish them there with ample and gainful employment. No sooner were the first exploits of the German navy known, and no sooner had the press began to foretell the founding of German colonies, than Bismarck gave the first rough outlines of his policy in a speech before the Reichstag. He wished, he said, to found not provinces but commercial enterprises; his object was not to open new countries whither Germans might emigrate; his object was to establish *entrepôts* for German manufactures, and to insure to these manufactures free access to new markets. Bismarck's endeavors sped apace. At Angra Pequena, at Cameroon, at Samoa, at Fernando Po, Germany had gained a footing, and German industry could compete with all other untrammelled by discrimin-

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ating imposts. The time had now come to take the second, perhaps the last, step required in the peculiar colonial campaign upon which Bismarck had entered. To establish *entrepôts* for German products in remote corners of the world without insuring the speedy, regular and frequent conveyance of these products to those places might have been but a waste of strength. In order to supplement that which the German war marine had achieved, it became necessary to create a fleet of merchant steamers whose mission it should be to establish such speedy, regular and frequent intercourse between the ports of the empire and those *entrepôts*. Accordingly, Prince Bismarck promptly began to demand from the Reichstag credits for the establishment of the needed steamship lines, besides subsidies for pushing the explorations in Central Africa. Neither proposition met with favor in the Reichstag. Nevertheless, during the years 1884 and 1885 the matter was vigorously pressed by Bismarck; and he finally demanded a credit of five and a half millions of marks for the establishment of steamship lines to the East, to Australia, and to Africa. The importance of the question, as regarded Africa above all, led during these years to protracted debates; and these debates revealed the full scope of the colonial policy of Germany. They gave a complete insight into the reasons that caused its adoption; the methods, foreign and domestic, by which it was to be developed; and the important end it has in view.

The Chancellor was reminded of his promise not to open new fields for German emigration; he was warned to avoid conflicts with nations which, like Great Britain and France, had widespread colonial interests, and powerful navies to support them; and he was admonished not to impose upon Germany any greater burdens than she already bore. Von Moltke had declared that Germany would have to keep up her enormous armament fifty years longer. Herr Windhorst, the spokesman of the opposition, asked: "Are we strong enough to bear the additional burden of a naval force equally enormous?"

Bismarck disposed of the arguments that implied a fear of other powers, by declaring he did not expect to see the govern-

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ment of Great Britain alienate the friendship of Germany by any attitude hostile to the colonial development of the latter, and thus compel Germany to throw the weight of her influence against the interests of Great Britain when the Egyptian and other questions of importance should come up for a solution. And, as to France, he reminded his opponents that she lay before the gate of sally (*Ausfallsthor*) of the fortress of Metz. No danger was to be apprehended from those sources. Moreover, Bismarck declared the fear that the colonial policy of Germany would necessitate the creation of a vast naval armament to be groundless for other reasons. That policy did not contemplate the establishment of any extensive colonial possessions requiring extensive armaments for their protection; on the contrary, having for its immediate object the opening of new channels to German commerce and industry, it only contemplated the establishment of *entrepôts* on the coasts whence Germany might introduce her manufactories into the interior. It was for this reason that, in Africa especially, the British threw so many obstacles in the way, not of the German government, but of the Germans themselves. It was for this reason that, with praiseworthy tenacity and energy, the British strove to keep and to extend their possessions in those latitudes; and their sole object was to be able to land the greatest quantity of British products possible, in order to dispose of them among the hundreds of millions of natives in the interior the moment the Africans should have acquired a taste for European products. Whatever charge might be brought against the British, they could not be charged with ignorance in business. What caused the middle classes of Great Britain to be in much easier circumstances than those of Germany? It was that Great Britain had many more millionaires than Germany. The larger the number of millionaires in Germany, the better off would she be: their millions would redound greatly to the benefit of the masses. It was the well-being of these masses, the Chancellor declared, he had at heart; and it was to compass their well-being at home, that the colonial policy of Germany was conceived. He was opposed to the foundation

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of colonies. Far was it from him to stimulate the exodus from the fatherland. His aim was to check the exodus by removing the necessity or the pretext for it, by furnishing plentiful and profitable occupation to the laboring classes, and thus rendering them happy and contented at home. What districts supplied the largest number of emigrants? It would be found to be the agricultural districts, where labor often lay idle. In the manufacturing districts emigration was reduced to a minimum. Increase the area of the manufacturing districts, the Chancellor urged, and the area of the districts that furnished emigrants, the area of the districts that bore citizens for foreign countries, would be diminished in proportion. To increase the area of the manufacturing districts, it was a prerequisite to increase the demand for German manufactures. The first steps to this end were taken. Gates hitherto shut to German industry had been broken open; new markets had been found for that industry; all that remained to be done was to seize those markets; the credits asked for would complete the work.

Notwithstanding such lucid explanation, the measure was stubbornly opposed; the supporters of the government succeeded ultimately in saving the line to Australia only. The line to Africa was rejected in the teeth of Bismarck's strenuous efforts. Bismarck was touched in his most sensitive part by the bitterness of the resistance he had met; and, stirred by the failure of what he considered the most important portion of the important measure proposed by him, he addressed the Reichstag in language that was as significant as it was poetic. He said:

> For the space of twenty years have I been pondering over the strange analogy so often noticeable between our history and our ancient mythology; and the thoughts that have come to me have often made me feel uneasy. In our mythology, whenever the gods were on the point of enjoying the pleasures of a splendid spring, the jealous Loki stepped in and stirred up dissensions and hatred among them. That spring of the year was enjoyed by us in 1866 when, with the aid of Providence, we untied the inextricable Gordian knot that impeded our national evolution. Such was the force of our tendency toward unification, that, after the lapse of not more than four years, no trace remained of the civil war, and

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the victors and the vanquished were found united against the foreign foe. I compare that epoch to the spring of which our mythology speaks. But it lasted only a few years after our victories of 1870. Whether the milliards have exercised this baneful influence I know not; but certain it is that Loki, our real hereditary enemy, . . . has risen anew; . . . and it is Loki whom I will arraign at the bar of God and of history if ever he succeed in destroying the magnificent work of Germanic unification which has been achieved with the sword.[1]

After these debates, and after these closing remarks, there can be no doubt as to the meaning of the colonial policy of Germany, and as to the importance attached thereto by Bismarck. Upon the opening and keeping of new markets for the industry of Germany, Bismarck pins his hopes for the retention of the Germans at home; and upon this retention he evidently considers the perpetuity of Germanic unity to be in great measure dependent.

Nothing daunted by the resistance he was encountering at home, Bismarck had continued to pursue his policy abroad. His quick eye perceived that the state of the Congo controversy, after the treaty of Feb. 26, 1884, and the claims that had been set up by the International Association, offered him a rare opportunity to turn to profit the location of the island of Fernando Po, and to secure free access to the interior of Africa for German industry. The treaty of 1872,[2] the latest between Germany and Portugal, had left extant the restrictions imposed by Portugal on foreign commerce in Angola. Any objection to the Anglo-Portuguese treaty, based solely on former freedom of commerce in those regions, would have stood on weak foundations. Nor could the foothold acquired by Germany at several points of Africa give her a *locus standi* in the discussion. But the recognition by Germany of the International Association of the Congo, with all its sweeping territorial claims, or the seeming readiness on her part to make such a recognition, would supply the want. Of the two

[1] Stenographische Berichte, 1884, II. pp. 719–747, 1050–1087; Europäischer Geschichtskalender, Schulthess, 1884, VI. 14, 17, 18, 26; XII. 1; Archives Diplomatiques, Chronique, 1884–1885; Mémorial Diplomatique, 1884, 425; 1885, 39, 151, 183.

[2] Martens, N. R. G. XIX. 500; B. and F. State Papers, LXII. 43.

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courses, the latter seemed to be the wiser for the moment; and that course Bismarck promptly adopted. The sinking hopes of the International Association of the Congo thereupon instantly revived; and with them the hopes of the boards of commerce of Manchester, Birmingham, and Glasgow, and of the Dutch and Belgian mercantile houses; and a new assault, more clamorous and vigorous than before, was made by these combined interests upon the course pursued by Lord Granville. Having in this manner first raised an organized opposition, and what seemed to be a widespread popular cry against the Anglo-Portuguese treaty, Bismarck proceeded to attack it in person; and from the commanding height he holds in the affairs of Europe, he aimed the unerring shafts of his diplomacy. He officially informed the cabinet of London that he did not think the treaty had any chance of being universally recognized; Germany, he frankly announced, was not prepared to admit the previous rights of any of the powers interested in the Congo trade as a basis for the negotiations; and she could not take part in any scheme for handing over the administration, or even the direction of trade and commerce, to Portuguese officials. In the interest of German commerce, he declared he could not consent that a coast of such importance should be subjected to the Portuguese colonial system.[1]

Although Bismarck believed that the diplomatic difficulties in which Great Britain was involved and the exposed situation of France enabled him to control the action of both, he adopted a very different line of policy toward each; he guarded against furnishing them with a common cause against Germany; and he strove to detach them from one another by drawing France over to his side at the same time that he attacked Great Britain. Accordingly, while he was imperious toward Great Britain, and in his note to London boldly refused to respect the previous rights of the parties interested on the Congo, his correspondence with France was dressed in the most conciliatory terms. He showed himself deferential to her government, and seemed considerate of the interests of the republic. Bis-

[1] The Congo, Stanley, II. 384.

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marck first broached to M. de Courcel, the French minister at Berlin, the question of extending the principles of the declaration of the Congress of Vienna to the river Congo; he then suggested the advisability of extending those principles to the river Niger also; of convening an international conference to this end, and of inviting the United States, Great Britain, Portugal, Belgium, the Netherlands, and Spain, to take part in the deliberations. M. de Courcel was informed that the wishes of France would be respected if she desired other nations to be invited besides those mentioned; and he was assured that no action should be taken by the proposed conference to force France to extend to her African possessions the principles which Germany wished to see enforced on the Congo and the Niger. And, finally, to leave nothing undone in this policy of propitiation, Bismarck expressed to M. de Courcel his willingness to abandon any point occupied by Germany in Africa, should such occupation be thought to conflict with the interests of France.[1] Great Britain was the only power of importance seated at the mouth of the Niger. The principles of freedom of commerce and navigation had not yet entered upon their first stages on that river; its navigation formed no part of the Anglo-Portuguese treaty; and it was jealously guarded by Great Britain. France had previously endeavored to enter the Niger, but without success. The prospect was now opened to her of enjoying this coveted privilege; and the privilege was to be enjoyed without the relinquishment by her of any of her exclusive rights over her African water-courses. The ill-will of Portugal, which the French government had but lately declared it was the interest of France to avoid, and the hostility of Great Britain, which, it might be thought, it should be slow in arousing, went for little with them. "*Das klug und richtig rechnende Frankreich*," to use Bismarck's own terms, seemed to find her account in seconding the views of the German chancellor, and in rendering him the valuable service of allowing her name to be joined to that of the empire, on the

[1] Archives Diplomatiques, 2de Serie. XII. pp. 332–337; Mémorial Diplomatique, 1884, 664.

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invitation that was soon to issue to the powers of Europe to meet in a conference at Berlin, where it was intended to victimize both Portugal and Great Britain.

The cabinets of Lisbon and London had intimation of the powerful opposition that was gathering against the treaty they had just concluded. In view of such an opposition, the ratification of the treaty would have been futile; it was decided it should be cancelled. But the cabinet of Lisbon did not yet give up its point of vantage. It made one more effort to restrict the controversy to the original issue; and it proposed a conference to the governments of Europe as the best means to settle their conflicting claims on the Congo. But the invitation that issued from Lisbon, although anterior in date, could not carry with it the weight of that that issued from Berlin shortly after. The powers of Europe and the United States were by this document informed that the governments of Germany and France concurred in believing that it was desirable to come to an agreement: first, on the question of freedom of commerce in the basin and at the mouth of the Congo; second, on the application to the Congo and the Niger of the principles which were adopted at the Congress of Vienna — principles which had in view the consecration of the freedom of navigation on several international rivers, and which were subsequently applied to the Danube; and third, on the establishment of formalities to be observed in order to render effective future occupations on the coast of Africa; and the powers addressed were invited to send representatives to the conference that was to meet at Berlin on the 15th day of November, 1884, in order to discuss and settle the matters above enumerated.[1]

III. *The Conference.*

The Berlin Conference met on the appointed day, in the palace of the German Chancellor, and in the same hall where, six years before, the Congress of Berlin had held its sittings.

[1] Europäischer Geschichtskalender, Schulthess, 1884, X. 6; Archives Diplomatiques, 2de Serie, XII. 363; XIII. 140; Mémorial Diplomatique, 1884, p. 731.

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The assembly presented an imposing appearance. Every important state of Europe, with the exception of Switzerland and Greece, was represented; and, for the first time in history, a delegation from the United States took their seats with those of European powers at a diplomatic conference in Europe. Prince Bismarck was called to the chair, and opened the session with an allocution regarding the humanizing tendency of the Conference, and its international significance. He again enumerated the three points for whose settlement the Conference was convened; these, he said, were the objective points of the Conference; and as if apprehensive of delay and of the consequences that might result if the thorny questions regarding sovereignty were allowed to be raised, he closed his address with the declaration that the Conference would not consider them. Indeed, the questions of sovereignty on the Congo and the Niger were of no moment for the purposes Bismarck had in view. It mattered little to him who held or claimed the empty honors, so long as Germany derived the substantial benefits.[1]

The exclusion of all questions regarding sovereignty shut out the elaborate brief which had been prepared on the subject by the representatives of Portugal; it cleared the atmosphere; and the Conference went to work immediately on the three points which were laid before it. The rapidity with which it disposed of these points showed that the principal part of its labors was accomplished before it had met. All that remained, apparently, was to ratify the decisions of the mastermind that had called it into being, and that directed its action. At the first sitting, Great Britain and Portugal gave in their adhesion to the application of the principles of absolute freedom of commerce and navigation to the Niger and the Congo. The adhesion of Portugal was given without qualification. A mixed commission, to be styled *The International Commission of the Navigation and Commerce of the Congo,* was thenceforth to be charged with superintending the application of the principles of freedom of commerce and navigation on that river. On the part of Great

[1] Europäischer Geschichtskalender, Schulthess, 1884, XI. 15.

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Britain the single point of honor was raised, that as she was the chief, if not the sole proprietor on the Lower Niger, it was her duty and her privilege herself to superintend the execution of those principles on that river; and the British delegate, Sir Edward Malet, stipulated that the surveillance over the execution of those principles should remain exclusively with his government. The two first points submitted to the Conference were thus settled without difficulty. The third and last was disposed of with equal ease. In order to render effective future occupations on the coast of Africa, it was agreed that prompt notice of such occupation should be given to the signatory powers; and the state making such occupation was furthermore required to establish and maintain in each case a sufficient authority to insure peace, and to uphold the rights assumed by it. After the settlement of these points, a number of secondary matters were introduced. In the introduction of these matters, Messrs. Sanford and Kasson, the representatives of the United States, took most active part; and it was mainly due to the ensuing discussions in committees, and on the floor of the Conference, that the sessions were prolonged until the end of February, 1885. It was thought necessary, in the first place, to define the basin of the Congo. Through the exertions of our representatives, supported by Mr. Stanley, our technical delegate to the Conference, the whole area of land drained by that river was included within the term, and placed under the jurisdiction of the *International Commission of the Navigation and Commerce of the Congo.* In the next place, Messrs. Sanford and Kasson endeavored to secure the adoption of a declaration binding the powers represented at the Conference to abstain from hostilities in the basin of the Congo, and to enforce the neutrality of the basin in case of war. In this they failed. After lengthy debates, the proposition was clearly shown to be chimerical; and in its stead a declaration was adopted by which the signatory states engaged to use their good offices to the end that, in case of war, the belligerent powers should not extend hostilities into the basin of the Congo, and should abstain from using said territory as a base for operations of

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war. Next to these propositions there came from the same source a series of well-meant motions regarding the treatment of missionaries, and the strictest enforcement of prohibition rules among the savages whom it was desired to civilize, but who were suspected of rather strong anti-prohibition leanings. Here their efforts were partially successful. Finally, as if to give a practical counterpoise to their previous projects, Messrs. Sanford and Kasson introduced propositions for the establishment of railroad lines at certain important points in the basin. In this they failed. But if they failed it was not through want of persistence on their part. The motion was introduced three times; three times it was defeated; a fourth and last attempt was made a few weeks after, and a fourth time the proposition was rejected.[1]

The promptness with which a common accord was reached upon the three points that were submitted to the Conference did not, however, exclude all discussion. The discussion that took place, although not extensive, is of importance as showing of how little value — notwithstanding the language of the invitations, notwithstanding the appearance presented by the Conference, and notwithstanding certain expressions embodied in its declarations — were its decisions when looked upon strictly from the point of view of international law. Baron de Lambermont, the Belgian representative, was made chairman of the committee, to which was referred the question of "applying to the Congo and the Niger the principles which were adopted at the Congress of Vienna — principles which had in view the consecration of the freedom of navigation on several international rivers, and which were subsequently applied to the Danube." It was to be expected that the report presented by the chairman of this committee would reflect the international spirit in which the invitation to the Conference was cast. In its preamble the report referred to the Congress of Vienna as having established certain general principles touching the freedom of navigation on the rivers whose free navigation was of *international importance;* it stated

[1] Mémorial Diplomatique, 1884, pp. 721, 744, 753, 769, 785, 801, 817; 1885, Nos. 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14; Archives Diplomatiques, 1885, III. 67, 181.

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that the application of these principles had been extended more and more to other rivers of Europe and America; that these principles had received their final sanction by being applied to the navigation of the Danube; and, lastly, that the declarations which the Conference was invited to make on this subject would undoubtedly mark an epoch in the history of international law.

The wording of the invitations to the Conference, and the allusion therein made to the Danube, had aroused the suspicion of the cabinet of St. Petersburg. To guard against surprises, Count Kapnist, the best equipped Russian diplomat on Oriental questions, had been charged to represent the government of the Czar at the conference. Count Kapnist was the only delegate on the floor whose attitude was manly. He could afford to be independent. He had not come to the Conference under the pressure of danger to his government, as did Sir Edward Malet; nor with a feeling of utter impotence in the face of a vast coalition against his country, as did the representatives of Portugal; nor merely to carry out his part of the performance in a bargain into which his government had been cajoled, as did M. de Courcel; nor yet had he come to fill an empty role, as did the rest of the representatives. Count Kapnist was the watch-dog of the conference. His mission was to hold the delegates to the actual work before them, and to prevent them from launching into generalizations for which, at the moment, there was no adequate international crisis. The preamble of the report presented by Baron de Lambermont brought the Russian diplomat to his feet. He took exception to the spirit that pervaded the report, and he objected to its marked tendency to raise the resolutions of the Conference to the importance of doctrines of public law. In view of the maxim that silence might imply consent, Count Kapnist denied, in the first place, that the declaration of the Congress of Vienna referred to rivers whose free navigation was of *international importance;* that declaration spoke only of water-courses traversing or separating several states. He denied that the principles of the Congress of Vienna were being extended more and more to several other European rivers; the rivers on which

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several states bordered, and to which those principles had been applied, were, in Europe, principally the Rhine, the Elbe, the Meuse, and the Scheldt; in so far as the Count knew those principles were applied to those rivers *pure et simple*, perhaps even with some restrictions; but assuredly they had not been more and more enlarged. He denied that the principles of the Congress of Vienna in regard to fluvial navigation had been applied to the Danube, either in the spirit or the letter of several essential dispositions contained in the Final Act of that Congress; he asserted, on the contrary, that the dispositions contained in that Act had been materially altered in respect to the navigation of that river. Its mouth had to be opened at a time when a number of vassal principalities bordered thereon, which were not able themselves to defray the costs of the undertaking. To that end, a European international commission was substituted in lieu of the riverine commission contemplated by the Final Act of the Congress of Vienna. This European commission had not lost the provisional character which attached to it from its origin. Count Kapnist challenged his colleagues to cite a single instance where article xv. of the treaty of Paris was applied. He doubted the existence of any such case, the explicit statements in the preamble of the report to the contrary notwithstanding. The system of an international commission to superintend the navigation of a river, Count Kapnist insisted, was an exception to and not an application of the rule established by the Congress of Vienna. The resolutions establishing such a commission for the Congo were also exceptional; the best proof thereof was that the Niger was to be subject to a totally different regimen. The government of Russia was willing, Count Kapnist declared, to join in the civilizing work of the Conference; but that government insisted upon the adherence on the part of the Conference to the exceptional character that typified it; and, so far from being willing to extend the bearing of the act on the navigation of the Congo, the government of Russia would acquiesce in its provisions only in case those provisions were expressly limited to those regions of Africa

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which were the legitimate subject of discussion before the Conference.[1] The soundness of the arguments of Count Kapnist could not be denied. Each time he rose to what may be called a point of order — and those times were not a few — the members of the Conference felt themselves forced back to the domain of facts; and, what is of great significance, each time his views were accepted and his amendments adopted. The phraseology of the general declarations concerning navigation that were ultimately embodied in the General Act of the Conference, was accordingly purged of all generalizations. These declarations now tamely set forth that an act was discussed and adopted as to the navigation of the Congo and the Niger, which takes into consideration the local circumstances affecting these rivers and their affluents, the waters that are similar to them, and the general principles set forth in articles 108–116 of the Final Act of the Congress of Vienna, intended to regulate between the signatory powers to that act the free navigation of navigable water-courses that separate or traverse several states — principles that have been generally applied to the rivers of Europe and America, and notably to the Danube, with the modifications provided for by the treaties of Paris of 1856, of Berlin of 1878, and of London of 1871 and 1883.[2] Thus the position of the navigation of the Danube was rectified and accurately defined; the generalizations on the declarations of the Congress of Vienna, and on the principles of public law which that Congress was thought to have consecrated, were dropped; and the pregnant phrase concerning the rivers whose navigation was of *international importance*, disappeared.

What then is the significance of the Berlin Conference, and of the General Act[3] that emanated from it when viewed from the standpoint of international law? Was the Final Act of the Congress of Vienna further confirmed; or did the Berlin Conference carry the declarations of that congress one step further

[1] Mémorial Diplomatique, 1885, No. 1, pp. 6, 7; No. 3, p. 41.
[2] Mémorial Diplomatique, 1885, 41.
[3] Mémorial Diplomatique, 1885, pp. 171, 185; The Congo, Stanley, App. 440.

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towards the establishment of the principle of freedom of navigation over navigable water-courses of *international importance*, whether such water-courses were or were not wholly within one state? Perhaps it was the secret and remote intention of Prince Bismarck to lay, by means of this Conference, the first foundation for the subsequent enforcement of this new principle. Perhaps he realized the obstacles he might in future encounter, were he at some later day, in order to bring himself within the principles of the declarations of Vienna, to be forced again, as he was forced this time, to recognize a new state on the borders of a navigable river, before he could demand admission for German bottoms on that river. If such, indeed, was in part his intention, it was frustrated by the watchfulness of Count Kapnist; and what might have been a step forward in the law of nations was prevented. Thus, viewed in the light of an international conference, the Berlin Conference only established two more exceptions to the declarations of the Congress of Vienna; it advanced no theory of international importance; it enunciated no new maxim of public law; it consecrated no principle of international jurisprudence.

To these conclusions, however, there may be cited one exception. The duties of a power, in order to entitle it to maintain its claims over newly-acquired territories, have not yet received from international bodies that consideration which the importance of the question demands. We learn from President Cleveland's message to Congress[1] that the Argentine Republic has revived the long-dormant claim for damages on the subject of the Falkland Islands. If traced to its source, this claim will be found to originate in an imperfect understanding of the rights conferred by original discovery. The affair of the Falkland Islands, the recent serious differences between Germany and Spain about the Carolinas, and numerous other instances of the same nature, show a defect in the law of nations in regard to the matter of new occupations, and are evidence of the importance of a common accord on that subject. The declarations of the Berlin Conference as to the formalities to be observed,

[1] Dec. 7, 1885.

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and the measures to be taken, in order to render further occupations on the coast of Africa effective, is a move in the right direction. These declarations apply, it is true, only to the coasts of Africa; but the soundness of the principle that underlies them justifies the expectation, that they may at no distant day receive a general international sanction. With this single exception, the Berlin Conference contributes nothing to international jurisprudence. In fact, from the moment when the private and special wants of Germany were brought to bear upon the discussion that was going on in Western Europe, the diplomatic character of that discussion was virtually lost. Diplomacy became subservient to an economic and social question. The international garb was kept mainly with the view the better to conceal the private and exclusive interests which the Conference was intended to promote.

A critical review of the results of the Berlin Conference would not be complete without a few words on the Free State of the Congo, a political entity which, though it formed no part of the deliberations, must be considered as the legitimate issue of the Conference. To enter on the Congo under the existing rules of public law, Bismarck was constrained to supply a neighbor to Portugal on that river. Accordingly, on Nov. 8, 1884, a week before the meeting of the Conference, a treaty was concluded between the German Empire and the International Association of the Congo, wherein the former declared its readiness to recognize the territory of the association, and of the new state about to be founded, "as indicated on the map annexed hereto."[1] This map was not then and has not since been made public. Promptly upon the publication of this treaty, most of the powers represented at the Conference entered into diplomatic relations with the representatives of the new state, then already calling itself the Free State of the Congo, and concluded with them treaties of recognition, friendship, commerce, and navigation.[2]

[1] Europäischer Geschichtskalender, Schulthess, 1884, XI. 8; Mémorial Diplomatique, 1884, 774; Archives Diplomatiques, 1885, III. 133; The Congo, Stanley, App. 421.

[2] Mémorial Diplomatique, 1885, pp. 232–233, 247–248; Archives Diplomatiques, 1885, III. 130–147; The Congo, Stanley, App. 423–429.

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Last among European states to enter into relations of friendship with the Free State of the Congo was Portugal. She had still hoped that no further sacrifices would be asked of her after the complete relinquishment of her colonial privileges on the Congo; but finally she submitted to this most unkindest cut of all, and, with the mediation of France, her representatives signed a treaty[1] with those of the Free State the day before the Conference adjourned. The treaties with France, Great Britain, and Portugal together define the boundaries of the Free State. The possessions of these three powers in Africa surround it almost entirely. To the east it reaches the sources of the Nile; to the north and south it occupies nearly the whole of Central Africa; and to the west, Portugal ceded to it a narrow strip of land, lying between her possessions of Cabinda on the north and the estuary of the Congo on the south, thus giving it an opening to the Atlantic. Having obtained European sanction, the Free State proceeded to evolve a visible head. King Leopold, of Belgium, was appointed its ruler;[2] and, thus equipped, this novel political structure started on its career with the millions of subjects it contains blissfully ignorant of their elevation to the rank of a nation, and with a number of enterprising men, societies and syndicates to manage its concerns and to make their fortunes out of it. The organization of the Free State, if it has any organization at all, is almost entirely mercantile. The chances of life of such a state in our century seem to be slim; mercantile sovereignties seem to be institutions of the past.

We cannot turn from the contemplation of the Berlin Conference without mixed feelings: admiration for the giant intellect in the chair, and the reverse of admiration for the pigmies who occupied the floor. While MM. de Courcel, Lambermont, Launay, Benomar, and the representatives of Denmark, the Netherlands, Sweden, and Norway, together with Messrs. Sanford, Kasson, and Stanley, strutted over the stage, believing

[1] Mémorial Diplomatique, 1885, 247; Archives Diplomatiques, 1885, III. 144; The Congo, Stanley, App. 431.

[2] Archives Diplomatiques, 2de Serie. XIII. 225.

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they had in hand weighty questions of international law and were originating principles of far-reaching importance, they were, in fact, one and all, either led or driven as Prince Bismarck pointed the way, for purposes with which they had no concern. Most to be regretted by an American was the spectacle presented by the delegation from our own country. In view of the traditional foreign policy of the United States, towards Europe especially, it was singular to behold this country, of a sudden, not only participating in a conference called into being by European rivalries, but going so far as to endeavor to lay the foundation for future international entanglements of the most serious nature. The efforts of Messrs. Sanford and Kasson to extend the basin of the Congo, and to bind the powers represented at the Conference to enforce the neutrality of that basin, in case of war, looked like a departure by the United States from its time-honored policy. It was so understood in Europe. And, so understanding it, it was applauded by the statesmen of those nations whose raids on the American hemisphere had been balked by the application of the Monroe doctrine; for the logical counterpart of that doctrine is the policy of non-interference in Europe.

Nor was the principle of non-interference in European affairs the only American principle which the attitude of our delegation tended to weaken. In the discussion with Spain regarding the territory comprised within the Louisiana purchase, and subsequently in the discussion with Great Britain regarding the Columbia River, it was maintained on the part of the United States that the nation which discovered and occupied a coast line where lay the mouth of a river, or which discovered and occupied the mouth of a river, whether such discovery was made by an authorized agent or not, acquired by so doing constructive possession of the whole basin drained by such river. This position was philosophic, but it was novel in the law of nations; it was combated in Europe, but it was insisted upon in the United States. Our State Department has more than once taken a position in advance of its times, and which was denied abroad; in such cases, its policy has been to wait

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until the ripening of the times should bring about a general acceptation of its views. The Berlin Conference was an excellent platform from which Messrs. Sanford and Kasson might have enunciated anew the views of their government. The mouth of the Congo, and a considerable extent of coast line north and south of that river, had been discovered by an authorized agent of the Portuguese government, and had been occupied by Portugal. Whatever her shortcomings might have been on that coast, Portugal was sovereign over Angola. It was not for the representatives of the United States to assist at the carving of a new state on the Congo out of territories which, according to American principles, were Portuguese; and thus to abandon, without any assignable cause, the position which their government had taken on two former and notable occasions.

However, the harm done in these two instances could, to some extent, be remedied. Our present administration has decided to withhold the General Act of the Conference from the Senate, and thus the government of the United States will not stand officially committed by the action of its representatives. But there is one consequence attending the presence of our representatives at the Berlin Conference, which no action on the part of the administration can now avoid. Had the Conference met at Lisbon, at Paris, or at London, the United States might have been represented without special injury to her interests. But the Conference at Berlin was one of series of measures adopted for the special purpose of checking the emigration from Germany; the bulk of this emigration comes to our shores; and of all ethnic alloys which the people of this country receives, that which proceeds from Germany is the most valuable. The bare presence of a delegation from the United States at Berlin increased the effectiveness of the Conference in the accomplishment of its special purpose; and that purpose assuredly was not to the interest of the United States.

These were the grossest political blunders of our representatives at the Berlin Conference; but there were others, though of minor importance. They rocked the cradle of a most sin-

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gular kingdom. They advanced political theories so naïve and of such primitive simplicity, that their views were, in mild derision, styled Arcadian by their colleagues. And, finally, their instinct for enterprise so far overcame the diplomatic character with which they were clothed, that they left an unpleasant suggestion of speculation behind them.

The Conference closed its sessions on Feb. 26, 1885, and its General Act has been ratified by all the powers who participated in the deliberations, except the United States. Since then, and fortified with the new advantages he has secured for Germany, Bismarck has returned to the charge in the Reichstag, and is anew engaged in proving the needfulness of credits for the establishment of steamship lines between Germany and the new markets that have been opened to her industry. Loki may be stirring. Though frequently presented and strongly urged, the credits demanded may continue to be refused. Ethnic causes may be silently at work that may counteract the efforts of Prince Bismarck to solve the social problem with which he is grappling. But whether he be successful or not, the Berlin Conference will stand as a monument of the restless activity of the man who, overlooking no opportunity, and spurning no means which his genius may suggest or which accident may create, steadily pursues his life's aim of welding into one self-reliant and stable nation the German-speaking peoples that are settled in the valleys of the Rhine, the Weser, the Elbe, the Oder, the Vistula, and the Danube.

DANIEL DE LEON.

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REVIEWS.

Report of the Senate Select Committee on Interstate Commerce: with Appendix and Testimony. 49th Congress, 1st Session, Senate Rep. 46, Parts I. and II.

This is the third investigation of its kind whose results have been made available for the general public. The first was that of Senator Windom's Committee on Transportation Routes to the Seaboard, in 1873. The second was in 1879, by a committee of the New York Assembly, under the leadership of Mr. Hepburn. The work done by the Hepburn Committee was enormous, its published documents covering about 5000 pages. Much of this material was of great value. The testimony of Mr. G. R. Blanchard, nearly 800 pages long, furnished the most complete and candid account of railroad policy and administration which has ever been given. So great has been the public demand for such information, that it is now almost impossible to get a copy of the Hepburn Committee testimony at any price.

Six years have made such changes in the railroad world that a new investigation was desirable; not merely as a basis of legislation, but as a means of public enlightenment. We have the results of such an investigation now before us, and they do credit to Senator Cullom and his associates. They cover less than 2000 pages, and contain no individual statement approaching in thoroughness that of Mr. Blanchard in 1879. But the average value of the contents is much greater than in previous investigations, and the amount of trivial matter much less; while the different sections of the country are represented far more fully than was possible in a state investigation which dealt largely with local interests. One of the most encouraging things in the whole matter is the way in which railroad managers and shippers are coming to a better understanding of one another's position. In each successive investigation extreme views are less frequent.

Passing from the testimony to the Report itself, we see evidence of the same progress. The reasoning is less crude; less is attempted, but more is accomplished. The first fifty pages are devoted to an account of the United States railroad system, the right of Congress to regulate it, and the difficulties involved in exercising that right. Nearly a hundred pages are then devoted to the various attempts to regulate railroads by legislation in England and in different states of the Union. This is the

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most valuable part of the whole Report. It is complete, accurate, and well digested. Only an official investigation could have brought out the facts so completely, and very few such investigations have had their results presented in such good shape.

A few pages are devoted to the comparative volume of state and interstate traffic, and to the effect of water competition, which is perhaps somewhat overestimated. Of much greater importance are the sections analyzing the complaints against the railroads and the principles on which railroad charges are based. As the result of their analysis, the Committee reach the following conclusions: (1) That rigid legislation is impracticable. (2) That publicity is the most effective remedy for abuses of railroad power. (3) That a national commission is needed to secure such publicity, and to use the necessary discretion in enforcing such laws as may be passed.

The Committee's bill provides for the establishment of a commission of five members, with power to enforce publicity of rates and investigate complaints against the railroads. It rigidly prohibits personal discrimination, and generally prohibits the more serious forms of local discrimination; but, under the latter head, it gives the commission power to make exceptions. In this respect it differs from the well-known Reagan bill, in which no such exceptions are allowed. It also differs from the Reagan bill in not prohibiting pools. On the whole it is an excellent bill; it avoids the two opposite dangers, of being so weak as to be meaningless or of being so strong as to be unenforceable. It is sincerely to be hoped that it may pass.

ARTHUR T. HADLEY.

Railroad Transportation: its History and its Laws. By ARTHUR T. HADLEY, Commissioner of Labor Statistics of the State of Connecticut, Instructor in Political Science in Yale College. New York, G. P. Putnam's Sons, 1885. — iv, 269 pp.

The History of Bimetallism in the United States. By J. LAURENCE LAUGHLIN, Ph.D., Assistant Professor of Political Economy in Harvard University. New York, D. Appleton & Co., 1886. — x, 257 pp.

These two books are perhaps the most notable contributions of the past year by American authors to economic literature. Mr. Hadley's book is a thorough and exhaustive discussion of the railroad problem. I say exhaustive advisedly, for the author goes into the history of railroads, describes the evils connected with their management, and discusses all the proposed schemes for remedying these evils. We have here the experience of the United States, of England, of France,

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Belgium, Austria, and Italy. We have displayed for us the good and the bad sides of the system of private ownership, of state ownership complete or partial, of state control, and of railroad commissions with greater or less power. The general impression left by the book is one with which probably most men, who have looked into the question at all carefully and with unbiassed minds, will sympathize: *viz.*, that the problem of railroad competition, monopoly, and rates is one of enormous difficulty; that the extreme of state ownership is a solution which has by no means been so successful abroad as to commend itself to us for adoption; and that our best course in this country for the present is to go slowly by appointing commissions, similar to those in Massachusetts and New York, for the purpose of investigating abuses and arousing public opinion. No one can say, however, that the book does not recognize the evils of railroad management, while at the same time it recognizes the seriousness of the problem and the difficulty of finding a solution which shall be for the best permanent good of the community.

Professor Laughlin's book is also exhaustive in the treatment of its subject. He not only gives the monetary history of the United States, but by means of elaborate tables and charts shows the relative production of gold and silver since the discovery of America, discusses the causes of the fall in value of silver, and the effect of the drain of silver to India, of the demonetization of silver by Germany, and of the formation of the Latin Union. Finally, he discusses the legislation of 1878 and the present situation. His position on the main points of controversy is easily determined. He does not believe in the appreciation of gold; he thinks that the cause of the decline in value of silver is the decreased demand for it, owing to the preference of civilized nations for gold; he does not think that the demonetization of silver in 1873 was accomplished in an underhand way; and he does believe that the present coinage of silver dollars should be stopped.

These books now are notable in two respects. In the first place, they are notable as contributions to the discussion of two very important economic questions, of which the one is pressing for solution at the present moment, and the other promises to loom up in the immediate future. The way in which these questions are discussed has been indicated above. It is an encouraging sign that the younger American economists are neither writing mere college text-books, nor confining themselves to the question of free trade and protection, which has hitherto monopolized so large a share of our economic literature.

But these books are still more notable in a second respect, *viz.*, method. Both authors employ the historical and statistical method of political economy, and do it consciously and avowedly. Mr. Hadley says in his preface:

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It [the book] aims to do two things: first, to present clearly the more important facts of American railroad business, and explain the principles involved; second, to compare the railroad legislation of different countries and the results achieved. The two things need to be viewed in connection with one another. The attempt to manage railroads without regard to public policy, or to legislate concerning railroads without regard to the necessities of railroad business, results in disastrous failure.

Professor Laughlin in his preface says:

And yet it was my hope that the effect of an historical inquiry in suppressing some of the theoretical vagaries of the day might be realized by showing what our actual experience with bimetallism has been, in contrast with the assertion of some writers as to what it may be. The practical lessons from facts in such a subject are more instructive than the suppositions of theory.

Both authors take the ground therefore that the true way to discuss economic problems is to study the past experience of mankind and see what that teaches us. It may be objected that such has always been the method of political economy in dealing with particular questions, and instances to this effect may be cited from Adam Smith down. Nevertheless, it may be asserted that under the influence of the political economy which has until recently been taught in this country, the answer to the railroad problem would have been simply the theory of non-interference; and to the silver question, Gresham's law. That these authors find it profitable to make such extensive inquiries, not only in respect to our own experience, but also in respect to that of other nations, shows that we are awakening to the real complexity of economic problems, and to the fact that their solution is not reached by citing a so-called principle from a standard text-book. Neither does the common objection to this method, *viz.*, that it gives us great heaps of facts but no definite conclusions, seem to be justified by the present instances. No one can read the two books without seeing clearly that both Mr. Hadley and Professor Laughlin have, in their own minds at least, reached very definite conclusions. It is to be hoped that this method will commend itself more and more to the younger school of American economists, so that we may have searching and thorough inquiries in all directions and thus lay the foundation for a genuine New Political Economy.

RICHMOND MAYO SMITH.

The Scope and Method of Economic Science. By HENRY SIDGWICK. London, 1885. — Small 8vo, 57 pp.

System der Nationalökonomie. Ein Lesebuch für Studierende. By GUSTAV COHN. *Bd. I. Grundlegung.* Stuttgart, 1885. — 8vo, 649 pp.

These two masterly works mark an important epoch in the contest between the old and the new political economy. Professor Sidgwick

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has shown in his *Principles* that he is a profound and original thinker, fully acquainted with the most recent results of continental development; Dr. Cohn, Professor at Göttingen, is known to all students of economics as the author of the *Englische Eisenbahnpolitik*, perhaps the ablest work on any question of practical economics that has yet appeared. In the present volume he amply proves that his capacity for treating the more general questions of theory is by no means inferior to his skill in attacking practical problems — a conviction that must already have forced itself on the minds of all those who know his *Essays in Political Economy* of 1882.

The significant part of Professor Sidgwick's essay is that which concerns itself with a criticism of the German school, a criticism in some respects inadequate. The author disclaims all connection with that kind of political economy which flourishes in proud independence of facts, and which is usually called "orthodox" — although, as he well observes, it has the characteristic, unusual in orthodox doctrines, of being repudiated by the majority of accredited teachers of the subject. "The absolute right of the individual to unlimited industrial freedom is now only maintained by a scanty and dwindling handful of doctrinaires, whom the progress of economic science has left stranded on the crude generalizations of an earlier period."

Sidgwick finds the pith of the argument of the German school in the assumption that economic man is not actuated by the motives of self-interest. He asserts that notwithstanding the Germans' higher view of man as a moral, sympathetic, public-spirited being, habitually rising above sordid huckstering considerations, the theory of the determination of economic quantities is actually not affected at all. In examining the new explanations of prices, of distribution, *etc.*, Sidgwick, although gratefully recognizing the immense debt which economics owes to the new school, professes to find everywhere the old economic motives assumed and the old method applied. "The proof of the pudding is in the eating; but our historical friends make no attempt to set before us the new economic pudding which their large phrases seemed to promise. It is only the old pudding with a little more ethical sauce and a little more garnish of historical illustration." (Page 36.)

There is, indeed, a grain of truth in this, in so far as it serves to reject the exaggerated claims of economists like Scheel and Wagner, who affect to regard with disdain the work of Adam Smith. In working out many practical problems, the impartial observer must confess that there is much less divergence between the methods of Smith and the modern school than it pleased the first enthusiasts to imagine. But Sidgwick's criticism is nevertheless in the main unfair. The old school said, the object of political economy is simply to explain; the new school maintains that

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the science means more than systematized knowledge, and that the work of political economy is largely to point out the way of reform. The old school was deductive, but drew its conclusions from entirely narrow and untrue premises. The new school is inductive as well, making use of history and statistics to confirm the validity of its conclusions, and opposing the assumptions of immutable law and universal applicability of the principle of self-interest, whether they result in the pessimism of Ricardo or in the optimism of Bastiat. And had Sidgwick looked a little closer, he would have observed that the modern doctrine of wages, for instance, is something more than mere "ethical sauce," and that the wage-fund theory, as originated by Malthus and formulated by Senior, has long since been relegated to the limbo of oblivion.

Cohn's book amply demonstrates the merits of the new school, while at the same time avoiding the exaggerations of certain German extremists. And Cohn moreover possesses a gift on which few of the German economists, except Held and Schmoller, can pride themselves — an attractive style, the lack of which all must deplore in Wagner, Schäffle, or the more acute Knies. The historical survey of the literature (pages 91–181) is necessarily somewhat superficial, but contains a comparatively just estimate of the position of the English school, recognizing what there is of value in their expositions.

The *Grundlegung* is a striking disproof of the erroneous idea that the new school necessarily implies a leaning to *Katheder*-socialism, or flatly opposes the principle of competition in itself. Cohn indeed calls economics an ethical science, and shows how the doctrine of price, of certain canons of taxation, of railway tariffs, can be adequately comprehended only through a recognition of certain moral considerations. (Pages 74, 374, 500.) But in the discussion of private property and state intervention, he takes the essentially critical and sceptical standpoint. The old conception of the state as a mere machine to protect property must indeed be abandoned; it must be recognized that the state also has certain positive moral duties to perform. But modern economics does not discard all competition; it asserts that free competition is in itself a neutral force, that it may produce good or evil results in different cases, and that only when its influence has been shown to be undeniably bad, is interference legitimate. In other words, the duty of the hour is to examine the particular facts of each individual case, and to refrain from positing any general laws, either of extreme individualism or of extreme socialism: to avoid the tendencies of a Bentham on the one hand, or of a Rodbertus and a Wagner on the other. Modern economics is historical, statistical, and therefore sceptical; and Cohn, in taking approximately a similar position, has made no mean contribution to the science.

EDWIN R. A. SELIGMAN.

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The Politics of Aristotle, translated into English by B. JOWETT, M.A., Master of Balliol College, Regius Professor of Greek in the University of Oxford. Vol. I., Introduction and Translation; Vol. II., Part I., Notes. Oxford, Clarendon Press, 1885.

The Politics of Aristotle are by no means exhaustive, yet they are not unworthy to rank with his logical and metaphysical treatises. They reflect on almost every page the writer's good sense and comprehensive knowledge; and while they contain many statements that are now seen to be absurd on their face, yet on the other hand, some of the propositions defended at length by Aristotle have become in the course of time mere truisms. Aristotle created logic, he systematized metaphysics, he wrote the first scientific treatise on psychology, and in his politics he has created a political terminology that we have not yet outgrown. In fact, we may exclaim with Jowett: "How little have we added except what has been gained by a greater experience of history?"

The volumes before us contain a translation of the eight books of the "Politics," and voluminous notes, philological, philosophical and critical. It is enough to say, in regard to the translation and notes, that they are worthy of the master of Balliol, who has been called the most cultured man of our generation.

For the student of political science, the volume yet to appear is perhaps the most important. In the second part of Vol. II., which is promised shortly, Professor Jowett will publish in the form of essays the results of his critical examination and his estimate of the great philosopher's political writings.

NICHOLAS MURRAY BUTLER.

Illustrations of the History of Mediæval Thought in the Departments of Theology and Ecclesiastical Politics. By REGINALD LANE POOLE, M.A. London, Williams & Norgate, 1884.—376 pp.

The valuable and interesting essays that compose this volume are the outcome of the author's studies in Germany and Switzerland as Hibbert fellow. The previous books in the series have been philosophical, and while philosophy is an important factor in Dr. Poole's work, yet his aim and method are historical. He divides the history of mediæval thought into two periods, each ending in the introduction of a foreign element and not in any outgrowth from native resources. The first period closes when the writings of Aristotle were translated into Latin and became the common property of the western world; the second period finds its termination in the Renaissance, when a knowledge of Greek literature came in to deepen and broaden the culture of the time.

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In both periods the heavy hand of authority and tradition checked all attempts at independent research. No man could wander from this beaten track; his only claim to originality lay in the skill with which he used his materials. The occasional flashes of independent genius which stand out against the black dulness of the age, furnish the subjects of Dr. Poole's essays. Claudius of Turin, Agobard of Lyons, John the Scot, all gained their title to remembrance from this independence, and the fact that the names of their fellows are so few adds to their own renown. Much of Dr. Poole's writing is theological in character, but theology was the mode of mediæval thought. The clergy were the literary class, and society was a theocracy. Education, politics, philosophy, all had to be reduced to theological standards, and expressed in theological terms. Theology was for a time the mould into which the great stream of human thought, which has after all a unity, had to flow. To study it in the middle ages, we must study theology; but on getting beneath the shell, we find that the substance — the thoughts and doubts and speculations — is after all not so different from that of our own age.

In treating the second of the periods referred to, Dr. Poole confines himself to that characteristic which is for us the most interesting, namely, the attempt to frame a political philosophy, and in particular to reconcile the notion of the state with the existence and the claims of an universal church, or to modify those claims by reference to the necessary exigencies of civil government.

Into a detailed examination of the several essays we have not space to enter. The exceedingly clear account of how and why it was the Irish race that kept alive learning in the West and spread it again over Europe, the careful study of Duns Scotus, and the examination of the hierarchical doctrine of the state as held and taught by Hildebrand and Thomas Aquinas, are perhaps the most interesting passages.

The whole work is done with scholarly insight, and after a patient study of the original documents and authorities. The book is a valuable contribution alike to history, to politics, and to philosophy.

NICHOLAS MURRAY BUTLER.

The Influence of the Roman Law on the Law of England, being the Yorke Prize Essay of the University of Cambridge for the year 1884. By THOMAS EDWARD SCRUTTON. Cambridge University Press, 1885.—xvi, 199 pp.

Considering the scope of the subject of this essay, and the knowledge necessary to approach it with any prospect of success, it is not surprising that a work "written in ten months by a young man within seven years of his first degree" should be a production, if of equal merit in

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all its parts, at least of very unequal value. Under the circumstances, Professor Scrutton could hardly do better than he has done, in giving a very substantial piece of original work in a limited portion of the field, and confining himself for the rest to collecting and arranging the work of others.

The book consists of two parts, of which the first treats of the period before the coming of Vacarius. Relying chiefly upon Stubbs and the *Essays in Anglo-Saxon Law*, the writer examines the allegations as to Roman influences made by Finlason, Coote, Seebohm and others. The vagaries of a Finlason are easily disposed of. Mr. Coote's ingenious arguments he considers unsupported by evidence; and Seebohm's theory of the origin of the manor as not yet proven, with the burden of proof on Mr. Seebohm. Professor Scrutton concludes that early English law was essentially Teutonic, with but slight traces of Roman influence, except in the introduction of wills and written instruments. With this general conclusion, we should think, every competent Romanist would agree. It is another question whether the introduction of the Roman law into England ought not to be put at a time much nearer the Conquest than the coming of Vacarius; and whether the latter event, though it undoubtedly marks the beginning of the great extension of the study, is not a result rather than a cause. There are many indications of a knowledge of the Roman law, and even of its application in the ecclesiastical courts, at least as early as the reign of Henry I. Much light would be thrown on this point by a determination of the date and character of the mysterious tract on Roman procedure in the Holkham MSS. This tract, attributed by Palgrave to Aldhelm, is referred by Haddan and Stubbs to a date not far from the Conquest. Dr. Liebermann accepts provisionally the opinion of Madden, who thought it the third part of the *Quadripartitus*, a law book compiled in England between 1113–1120. The opening sentences, which are all that have yet been printed, seem to be very nearly identical with those of the treatise known as *Ulpianus de edendo*, or the "Pseudo-Ulpian," but the date usually assigned to the latter treatise is about 1150. May we not hope that some competent authority will determine the questions raised by this MS. — questions of importance not only for England, but for the general history of Roman law in the middle ages?

With Caillemer's book Professor Scrutton was not acquainted; and the opening chapter of Part II., on Vacarius and the introduction of the Roman law, is hardly adequate even as an outline of a period the importance of which is attested by the existence of at least six treatises on Roman and Canon law, ranging in date from 1150 or earlier to 1189, all written by Anglo-Norman lawyers, and one the work of an English Chancellor and Chief Justiciar. With these may fairly be reckoned the inter-

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esting *Ordo Judiciarius* published by Gross, which shows clearly the method of teaching the Roman law in connection with the Canon law in vogue in Paris in the years 1170–1180; that is, at a time when Paris was much frequented by English students. That this close connection of the Roman with the Canon law was the real ground of Stephen's hostility to the teaching of Vacarius there would seem to be no doubt, though Professor Scrutton, following Wenck, thinks it improbable. The argument that Vacarius could not have taught the Canon law, because Gratian's Decree was not published until 1151, is no longer tenable now that the better opinion puts the decree between 1139 and 1142. If Vacarius came to England in 1143, the nearness of the dates is certainly suggestive. Nor can the later legislation of the popes, forbidding the study of the Roman law by the clergy, be allowed much weight. Cultivated at first in northern France and in England as the handmaid of the Canon law, the Roman law was soon studied for its own sake to an extent and with an enthusiasm that threatened serious injury to other studies. Peter of Blois is a mournful witness to the attraction of the study for his own mind, in spite of a growing conviction that it could bring him advantage neither in this world nor in the next. Many of the clergy neglected theological for legal studies, and, debarred in consequence from promotion to high rank in the church, and finding insufficient scope for the exercise of their legal training in the ecclesiastical courts, attached themselves to the king's service. Through them, the Roman law exercised an influence upon English legal development which was none the less important, and probably more valuable, because it was indirect. This neglect of theology, and the occupation of the clergy with secular matters, led to the decretal of Honorius III.; but in the time of Vacarius the evils had begun to be felt only in the monasteries, and the legislation cited by Scrutton aimed only at preserving the monastic rule.

The long chapter on the Roman law in Bracton is a monograph by itself, and constitutes an important and valuable addition to our knowledge. The work here is done so well as to furnish ample proof that the defects in other parts of the book are due only to the circumstances under which the essay was written. By a minute and careful comparison of Bracton with Azo, Professor Scrutton has gone far to settle the question of Bracton's relation to Roman law. His conclusions, though given with great modesty, seem hardly to admit of question after the careful analysis of the sources upon which they are founded:

> English law was reduced to order on a Roman frame-work, furnished with many Roman terms, its gaps filled up with actual Roman matter, so long as this was not inconsistent with English law. At the same time Roman influences, acting on the judges, vary some existing English rules. . . But I know of no case where Bracton has cited Roman law, the previous English rules

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being to a contrary effect, unless, indeed, some previous decisions give him warrant.

On the question whether the Roman law which Bracton incorporated was valid English law, he thinks that there are "no materials in existence for a positive answer to this question," but inclines to the opinion that

> As regards the first part of Bracton's work, it was new matter to the English law, directly copied from Roman sources to fill up a frame-work of his first three books, which he had adopted from the Institutes. As to the second part, I think that Bracton has both introduced new Roman matter, and reproduced English law, derived from the Roman by the decisions of other clerical judges, and then recognized as the law of the land.

The book closes with a number of short chapters on Roman law in the text-writers, from Britton and Fleta to Coke, Hale, and Blackstone; an interesting chapter on the authority of Bracton since Coke; and chapters on the Roman law in the ecclesiastical courts, in the admiralty, in the law merchant, and in the common law. These contain a good deal of interesting matter not easily accessible. On the whole, Professor Scrutton has made an important contribution to one of the most difficult problems of English legal history; and we may hope for much good work from him in the future in a field which has hitherto been much neglected.

ERNEST YOUNG.

The English Historical Review, edited by the Rev. MANDELL CREIGHTON, M.A., LL.D., Dixie Professor of Ecclesiastical History in the University of Cambridge. No. 1, January, 1886. London; Longmans, Green & Co. — 208 pp.

Annales de l'École libre des sciences politiques, recueil trimestriel, publié avec la collaboration des professeurs et des anciens élèves de l'École. No. 1, Janvier, 1886. — 164 pp.

The *English Historical Review*, we are told in the "prefatory note," will not confine itself to political history, nor will it attempt to deal with the general development of civilization. Its editor regards history "as the record of human action, and of thought only in its direct influence upon action." To "avoid the suspicion of partisanship," contributions which argue political or ecclesiastical questions "with reference to present controversy" will be refused. Ancient and modern, home and foreign history "will be duly cared for."

There is certainly no suspicion of partisanship or reference to present controversy in the contents of the first number, for but two out of the five articles deal with the nineteenth century, and but one of these with English affairs. Under the title "Notes on the Greville Memoirs" an anonymous contributor gives a clear and interesting account of the

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unsuccessful attempt of Lord John Russell to form a ministry in 1845. The other nineteenth century paper is Lord Acton's "German Schools of History." This article is wider than its title. Lord Acton shows how the historic method has come to dominate the thought of Germany in this century, and outlines its application in politics and economics, law and theology, philology and literature. He writes with equal appreciation of the work of Ranke, Roscher, and Jhering; and his sympathies are sufficiently catholic to enable him to understand men as widely apart as Gervinus and Treitschke. The other articles in the *Review* range backward from the eighteenth century to the time of Homer. Provost Monro of Oriel writes upon "Homer and the Early History of Greece"; Dr. Freeman upon "The Tyrants of Britain, Gaul, and Spain" (406–411, A.D.); and Professor Seeley endeavors to show that the family compact of the French and Spanish branches of "The House of Bourbon" shaped the politics of Europe in the eighteenth century. The literary notices in the *Review* are particularly full. More than thirty pages are devoted to reviews of books, twelve more to a list of recent historical works, and seven pages to periodical publications.

The *Annales de l'École des sciences politiques* bear close resemblance in scope and purpose, as in genesis, to the POLITICAL SCIENCE QUARTERLY. The *Annales* are devoted to public law and economics; and these subjects are to be investigated by historical and statistical study and comparison of legislations. The editors take a position distinctly opposed to that of the *English Historical Review*, promising that no question of practical interest which presents itself in France or in foreign countries, and which falls within the domain (*compétence*) of the *Annales* will be passed in silence. One of the longest articles in the first number (that of Dr. Louis Ayral) is devoted to the question of disestablishment and disendowment in England. Two other articles, at least, are of present and somewhat controversial interest; *viz.*, M. Léon Say's history of the interventions of the Treasury upon the *bourse* during the past hundred years, and M. Glasson's article upon the abuses arising from the conflict of laws in regard to marriage. M. Léon Poinsard studies the present system of taxation in England, and discusses briefly the plans of the English Radicals. The two most distinctively historical articles reach back to no remoter period than that of the great Revolution. M. Raymond Koechlin publishes a preliminary article upon the French policy at the Congress of Rastatt, and M. Albert Sorel has a masterly characterization of Mirabeau — masterly alike in its historical insight and its literary beauty.

Almost simultaneously with the first numbers of the *English Historical Review* and the French *Annales* comes the prospectus of a new public law quarterly, the *Archiv für öffentliches Recht*, edited by Professors

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Laband, of Strassburg, and Störk, of Greifswald. It is to be devoted to questions of international and administrative law. Among the contributors are Gneist, von Martitz, and other well-known German publicists. The names of the editors are a sufficient guaranty for the value of the new journal. It is certainly a significant fact — significant of a growing interest in historical and political studies — that the year 1886 has already brought forth three — or, with our own, four — quarterly reviews of history and political science.

MUNROE SMITH.

Wegweiser durch die neuere Literatur der Staats- und Rechtswissenschaften. Für die Praxis bearbeitet von OTTO MÜHLBRECHT. Berlin, 1886. — Large 8vo, 446 pp.

This book, published by the well-known firm of Puttkammer & Mühlbrecht in Berlin, is a most valuable bibliography of the political sciences, brought down to the present day. It contains about 16,000 titles, taking in the literature of Germany, Austria, Switzerland, France, Belgium, England, America, Italy, Holland, Sweden, Norway, Denmark, and Spain. Naturally, however, the greatest stress is laid on the continental European works. A systematic table of contents and a complete index materially enhance the value of the book. Among the various headings, all of which are again subdivided, we notice: Philosophy of Law, History of Law, Private Law, Canon Law, Constitutional Law, Administrative Law, Political History, Political Economy, International Law, Law of Separate States. Among the subdivisions, the labor question, to take a particular example, occupies over ten large pages, re-divided into: General, Sickness, Dwellings, Wages, Factories, Friendly Societies, Insurance, Arbitration, Conciliation, Strikes, Guilds, Apprentices, Trades Unions, Periodicals. Although the book makes no claim to absolute completeness, it will prove indispensable to every student of political science.

E. R. A. S.

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